The PRACTICK PART

OF THE LAW:

29 Shewing the Office of a

COMPLEAT ATTORNEY

In the full Prosecution of any Action, whether Reall, Personall, or Mixt; (From the very Originall to the Execution) in all Courts: with the exact Fees of all Officers and Ministers of the Courts.

TOGETHER

With speciall Instructions for the Solicitation of any Cause in *Chancery*, or elsewhere, relating to the present Government; being Usefull for all Men.

With an exact Table, wherein are contained all the principall matters in the whole Book.

LONDON,

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C7372

TO THE READER.

Rec. Feb. 17, 1905

TO THE READER.

Reader,

HAVING obſerved the many Errours dayly committed through the miſtake of the nature of the Action to be Sued, and conſequently, as well the miſgrounding of the Action, as the undue proſecution thereof, to the utter loſſe of many a Cauſe, hath put my intentions on work to give thee ſome light, in ſuch wayes, where either thou doſt voluntarily goe to purſue thy right, or art Involuntarily driven to defend thy right: To that purpoſe was this Compoſure undertaken, wherein thou ſhalt finde the whole progreſſe of the Law in the Practicall part: So that whether thou haſt buſineſſe of thine owne, or on the behalfe of another, here upon all oc-

caſions thou mayſt finde Inſtructions, for a due and full proſecution thereof; there being ſcarce any Actions, Reall, Perſonall, *or* Mixt, *in what Court ſoever, but its Nature, Progreſſe, Judgment, and Execution is here explained, with the duty of all Officers,* Judiciary *and* Miniſteriall; *as alſo the juſtifiable Fees and Allowances of the* Prothonotaries, Maſters *of Offices,* Secondaries, Clerks, Attorneys, Sheriffs, Under-Sheriffs, Bailiffs *of Franchiſes, and preſcribed Liberties, the Practice of the high Court of* Chancery, *the Fees of the* Six Clerks, *&c. All which being methodically diſpoſed, with an exact Table to every particular, will, I hope, render thee a benefit worthy of thy kinde acceptance.*

Farewell.

1653

The Compleat Attorney.

Being full and Exact directions for all manner of Proceedings at Law, in all Courts whatsoever; Together with all Fees incident thereunto.

THE Office of an Attorney requires much knowledg both of the Theorique and Practique parts of the Law.

The one is to be gained out of the bodie of the Law, and cannot be expected to be ascertained in this small tract.

For the better enabling of him to the later is this ensuing discourse intended; wherein we shall begin with the Court of *Common-Pleas*, as being of the largest Extent, in relation to the multiplicity of Actions, both reall, personall, and mixt, properly incident to that Court, wherein all persons of the Nation, either as Plaintiffs or Defendants, are more or lesse concerned.

The Court consists of a Chiefe Justice, and three other Judges.

The subordinate Officers are,

The *Custos Brevium*, or Keeper of the Writs.

Three Prothonotaries (one of which was anciently incident to the *Custos brevium* for the time being) who by themselves and their Clarks, draw all Pleadings, and enter them, and exemplifie and record common Recoveries,

The Clarke of the Warrants, who entereth all Warrants of Attorney, and enrolleth all Deeds acknowledged before the Justices of the Court.

Philizers, who make all manner of Meane proceſſe upon originall Writs before appearance.

The Clark of the Eſſoynes, who doth enter the Eſſoynes and Exceptions in all Actions wherein Eſſoins lie, and prepareth and marketh all the Rolls uſed for the Court.

The Clark of the *Outlawries*, who makes the *Capias Utlagatum*, upon the return of the Exigents brought in unto them: this Office is properly incident to the Attorney Generall for the time being.

The Clark of the *Superſedias*, who makes Writs to ſuperſede the Outlawing of perſons granted by Letters Patents under the great Seale of *England*.

The Exigenters who are in number, and make the Writs of Exigents and Proclamations, in order to Outlawry upon the *Plures Capias* brought in unto them.

The Clark of the Juries who makes the Writs of *Habeas Corpora*, and *Diſtringas Jur.* for the tryall of Iſſues.

The Chirographer, who doth make the Indentures of Fines levyed, and hath many ſubordinate Clarks for the ſeverall Counties where the Lands lie.

The Clark of the Kings-ſilver, ſo anciently called, who doth enter on record the Money which the State is to have upon Fines, for the Poſt-Fines, according to the yearely value of the land, as the ſame is rated on the Writs of Covenant.

The Clark of the Errours, who makes all *Superſedias* upon writs of Errour, and doth tranſcribe the Records out of the Treaſury, belonging to the Comon Bench, into the Upper Bench.

The Keeper of the Treaſurie, who hath the keeping

ing of the Rolls entered of record in the Court, and the making forth of Copies and Exemplifications thereof, and alſo of all records of *Niſi Prius*.

The Proclamator of the Court; The Keeper of the Court; The office of Inrollment of Fines and Recoveries erected by Statute.

Foure Cryers, or Tipſtaves, Subſtitutes to the Proclamator.

The Warden of the Fleet, who by himſelfe or his Deputy is to attend the Court, that Priſon being proper for all Commitments out of that Court.

The pleaders are all Sergeants of the Coife, none under that degree being allowed to plead in that Court.

The Attorneys are very many, being not limited to any ſet number; anciently they were ſuch as either had ſtudied the Law for ſome years in ſome Inne of *Chancery*, where was uſually their reſidence, or had ſerved for the ſpace of 6. or 7. yeares, with ſome able Attorney of the Court, whereby they come to be very knowing in the practiſe of the Court, the better to manage their Clyents Cauſes with ability and integrity, to the honour of the Court, and their owne credite.

At the time of their being admitted Attorneys, there is an Oath adminiſtred unto them as follows.

YOu ſhall doe no falſhood, nor conſent to any to be done in the Court; and if you know of any to be done you ſhall give knowledg thereof to my Lord Chiefe Juſtice, or other his Brethren, that it may be reformed. You ſhall delay no man for lucre or malice, nor ſhall encreaſe no fees, but be contented with the old accuſtomed fees. You ſhall plead no forreign plea, nor ſue no forreign ſuites unlawfully to hurt any man, but ſuch as ſhall ſtand with the order of the Law and your Conſcience. You ſhall

ſeale all ſuch Proceſſe as you ſhall ſue out of this Court, with the Seale thereof, and ſee the Kings Majeſtie, and my Lord Chiefe Juſtice diſcharged of the ſame. You ſhall not wittingly nor willingly ſue, nor procure to be ſued, any falſe ſuite, nor give ayde or conſent to the ſame, on paine of being expulſed from the Court for ever. And further, you ſhall uſe your ſelfe in the office of an Attorney within the Court, according to your learning and diſcretion, ſo help you God.

Having taken his Oath, hee is to pay the fees of Court incident thereunto, as follows.

Imprimis, to the Judges boxe, 20 s

To the Secondary of the Chiefe Prothonotary, who giveth the Oath, 12 d.

To the Cryers, Court Keeper, and other Officers, 11 s.

Then muſt he have a note from the Prothonotary, in whoſe office he intends to enter, directed to the Clarke of the Warrants, which is uſually made, as follows.

Of the Terme of St. *Hillary*, in the yeare, 1651.

T. D. Gent. ſworn in Court the 10. day of *February*, in the ſelfe ſame Tearm, in the office of Attorney, of the Common wealth of the Common Bench.

To which the Prothonotary ſubſcribeth his name.

Which note being delivered to the Clark of the Warrants, he enters the name into the Roll of the Attorneys names.

The Clark of the Warrants hath for the Entring thereof 4 s. and 4 d. and for the Roll of that Terme, 4 d.

And ſo he ſtands charged to pay 4 d. for the future, ſo long as hee continueth an Attorney of the Court for each Tearm.

The Attorney thus fitted for practiſe, he muſt be very

very carefull in taking right and due inſtruction from his Client, and informe himſelfe of whatſoever is materially incident to his Cauſe, that ſo he may know what manner of Action is moſt proper to be brought on the behalf of his Client, for a Cauſe once throughly weighed, and rightly grounded, goes on with a great deale of eaſe and ſatisfaction both to the Attorney and Clyent.

The Attorney ought to be throughly verſed in the nature of all ſorts of Writs, as in the Regiſter, Terms of the Law, and other Books now extant.

To begin with Actions of Debt.

FIrſt, you are to take notice of your Plaintiffs name, and of his cauſe of action, whether it ariſe by Bond or Bill, which are called Specialties, or otherwiſe for arreares of Rent, Wares, Cattel ſold, or any other Chattels, or for work or ſervice done, *&c.* If by Bond or Bill you muſt take an exact note of the Defendants name, together with his addition preciſely as he is written in the Obligation, or Bill, that ſo you may make your Originall and your other proceſſe to agree with the Obligation, otherwiſe it is Errour.

That done, you muſt make a ſhort note to the Curſitor, if in debt, as follows.

London. ſſ. Command *I. C.* lately of *London*, Gent. otherwiſe called *I. C.* of *L.* in the County of *H.* Gent. that juſtly, and ſo forth, he render *T. B.* 40 l. &c. Originall returnable 15. dayes after *Eaſter*. *Giles.*

Which being done, you muſt carry your note or notes to the Curſitors Office, and deliver it to that particular Curſitor who is for the County you lay your Action in, who maketh your Originall, and delivereth it you under Seale.

This Originall is your firſt Proceſſe, and is a Summons: and although it iſſue out of the *Chancery*, yet

is it made returnable before the Juſtices of the *Common Pleas* at a certaine returne: And between the Teſte and Returne of the ſame (as alſo in all other ordinary writs to be ſued forth, and procured upon the ſame) muſt be 15. dayes at the leaſt.

Note that this Writ may beare Teſte out of the Terme, becauſe it is to be underſtood that the Court of *Chancery* is alwayes open.

All other Proceſſe ſued forth at the Court of *Common Pleas*, muſt beare Teſte ſometime within the Terme, and in the name of the Chiefe Juſtice of the ſame Court for the time being, and one Writ is to beare Teſte from the returne of another, as namely the *Capias*, (which is the next Writ to the Originall, in an Action of Debt) from the returne of the Originall, the *alias Capias*, from the return of the *Capias*, and the *Plures* from the return of the *Alias*, and the Exigent and Proclamation from the return of the *Plures*, and theſe are the ſeverall Writs in order to an Outlawry.

The returne of your Otiginall in Debt is thus.

John Doe
Pledges of proſecuting
Richard Roe.

The within named *I. S.* hath nothing within our Bayliwick whereby he may be ſummoned.

The anſwer of *R. B.* and *I. S.* Sheriffs.

If there be two Defendants in the Originall, the Return muſt be thus.

The within named *I. C.* and *D. L.* have nothing within our Bayliwick, whereby they may be ſummoned.

If there be more then two Defendants, then thus. *I. C.* and the reſt of the Defendants within written, have nothing within our Bayliwick whereby they may be ſummoned.

Note

Note it is ſayd (within our Bayliwick) becauſe the Action lies in *London* where there are two Sheriffs, otherwiſe where there is but one Sheriff you ſay (within my Bayliwick) and the like for all other Cities that have two Sheriffs, and likewiſe the words (the anſwer of) are intended onely where there is two Sheriffs, otherwiſe you barely recite the Sheriffs Name and Stile at the bottome of the back of the Writ.

Your Originall being thus made and returned, you muſt deliver the ſame to the Phillizer of the County, City, or Shire, where your Action is layd, to have ſuch further proceſſe made thereon, either in ſuing to the Outlawry, or otherwiſe, as the preſent Terme wherein you ſue forth the ſame, ſhall by reaſon of the length or ſhortneſſe of the time allow, obſerving the former rule of fifteen dayes betwixt the Teſte and the returne of every Proceſſe.

The ordinary and uſuall proceſſe thereupon with the Phillizer, are thoſe formerly mentioned which he maketh upon the Originall Writ brought to him, for which you deliver him 4 d. as payable to the *Cuſtos brevium*, for filing the Originall.

Firſt, A *Capias*, for which you pay 10 d.

Secondly, An *Alias Capias*, which coſts 6 d.

Thirdly, A *Pluries Capias*, for which you pay 6 d.

The returnes whereof are as followes:

The within named *J. C.* is not found within our Bayliwick

And if more then two Defendants, then thus:

J. C. and the reſt of the Defendants within written are not found within our Bayliwick.

The anſwer of R. B. *and* J. S. *Sheriffs*

But if you intend not to ſue the Defendant to an Outlawry, but that his body may be eaſily and readily arreſted, then you need not proceed further then

to the *Capias* onely, and deliver the ſame to the Under-Sheriff of the County, and procure a Warrant thereupon, and get him arreſted by the Sheriffs Bailiffs, which is a great furtherance to your Clients cauſe, in relation to Tryall, and procuring Judgement.

Note that you are to pay 4 d. as a *Poſt diem* for each of the aforeſaid Proceſſe which you bring not in to the Phillizer by the day of the returne.

The two cheife Termes wherein to commence Suits to the Outlawry, are *Eaſter* and *Michaelmas* Termes, they having in them the moſt returnes, for if you begin in *Eaſter* you ſhall Outlaw the party, if he appeare not, in *Michaelmas* Terme next following, and if you begin in *Michaelmas* Terme, you ſhall doe the like in *Eaſter* or *Trinity* Terme then next following.

Note that you may have an Originall Writ made returnable of a precedent Terme, upon bringing a Note to the Curſitor within the firſt week of the following Terme, but if you ſlack that time, you looſe your advantage.

Anciently the courſe hath been, that if an originall Writ be made againſt a Knight, Eſquire, Gentleman of worth, or other ſubſtantiall Free-holder, that hath ſufficient Lands and Tenements in the ſame County where the Action is laid, then ought a Summons to be returned by the Sheriff of the County who is to execute it: And you cannot return that originall of Courſe by the return of (having nothing, *&c.*) For otherwiſe the Defendant, if he have ſufficient in the ſame County, and he be returned, (to have nothing, *&c.*) may bring an Action of the Caſe, for diſabling of him in his Eſtate againſt the Attorney for the Plaintiff, or againſt the under Sheriff of the County, who ſhall make ſuch return,

to

to dilable him upon a Summons, if he appeare not, you proceed by *Pone*, and ſo to a diſtreſs, and if he appeare not upon the Diſtringas, you have an *Alias Diſtringas*, and ſo Diſtreſs upon Diſtreſs untill he appeare; but this manner of proceedings, by way of Summons hath not been uſed of late.

Upon the making and Suing forth of every originall Writ, if the Debt or Damages therein ſpecified do exceed forty Pounds, Then there is a certain Fine due for the ſame, to be paid formerly to the King, now to the State, as followes.

Imprimis, from forty Pounds to a hundred Marks, Payes 6 *s.* 8. *d.*

From a hundred Marks to a hundred Pounds, payes 10 *s.* 0.

From a hundred Pounds to two hundred Marks, payes 13 *s.* 4 *d.*

From a hundred thirty three Pounds ſix Sillings and eight Pence to a hundred ſixty ſix Pounds thirteene Shillings and foure Pence, Payes 16 *s.* 8 *d.*

From a hundred ſixty ſix Pounds thirteen Shillings and foure Pence, to two hundred Pounds, payes, 20 *s.* 0.

And ſo conſequently for every hundred Marks more, payes 6 *s.* 8 *d.*

And for every hundred Pounds more, payes 10 *s.* 0.

If you begin in *Eaſter* Term, you may procure your *Capias*, and *Alias Capias*, returnable in *Trinity* Term, and in *Trinity* Term ſue forth your *Plures Capias*, Exigent, and Proclamation, if in *Michaelmas* Term you may ſue forth the originall *Capias* and *Alias Capias* returnable the ſame Term, and a *Plures Capias* returnable in *Hillary* Term then next following, and in the ſame Term procure your Exigent and Proclamation.

Note

Note that if you lay your Action in *London*, the Party will be the ſooner out-lawed, in reſpect of the Huſtings, being oftner there then elſewhere.

Now if the party have ſued out his Originall in *London*, and the Party live elſewhere, and that he would have him more ſpeedily Arreſted then by way of Out-lawry upon the return (of the Parties not being found, *&c.*) By the Sheriff, he may have a *Teſtatum*, into the County where he liveth, to Arreſt him there; the Fee of which Writ is twelve Pence.

All the Writs before mentioned muſt be filed with the *Cuſtos brevium*, either by your ſelfe or the *Philizer*, or elſe there will be Errour in the Proceedings.

The *Plures Capias* being orderly procured, ſued forth and returned, muſt be delivered to the Exigenter of the County, where the Action is layed, and he will make an Exigent, and Proclamation thereupon.

The Exigent and Proclamation, muſt be delivered to the under-Sheriff of the ſame County, where the Defendant dwelleth, to be executed according to the form of a Statute, in that caſe made and provided, and according to the Tenure and Form of the ſaid Writ.

The charge of a Sute to the out-lawry are as followeth.

Doe againſt *Roe.* } *Eaſter Terme*, 1651.

	l	*s*	*d*		
For the Fine to the State.	0	10	0		
For the orlginal, *Poſt diem*, and entry.	0	1	5	*s*	*d*
For the *Capias* Seale and *Poſt diem*.	0	1	9	17	11
For the *Alias capias*, Seal, and *poſt diem*	0	1	5		
For the Attorneys Fee.	0	3	4		

Trinity

Trinity Terme following. l s d

For the *Pluries Capias*, Seal, and *Post diem*.	0-1-5		
For the warrant of Attorney.	0-0-4	s	d
For the Exigent and Seale.	0-1-7	8 —	9
For the returne thereof.	0-1-0		
For the Attorneys fee.	0-3-4		
The sum totall is	1-6-8		

If the Exigent be againſt ſeverall Defendants living in ſeverall Countyes, ſeverall Proclamations muſt go to the Sheriff of the ſeverall Countries, which will increaſe the charge: And further take notice, there muſt be of neceſſity five County dayes, between the Teſte and the return of the Exigent, or elſe you muſt be neceſſitated, to ſue forth another Writ, called an *Allocatus*, from the ſaid Exigenter, to be delivered to the ſaid under-Sheriff, to the great hinderance and charge of the Clyent; and your *Allocatus* muſt beare Teſte with the return of your former Exigent, and be returnable the next return, after the fifth County-Day, and your Exigent and Proclamation, muſt have one and the ſame Teſte and return.

You muſt carefully examine all the aforeſayd Proceſſes, that there be no difference or variance either in the ſums, names, or additions, from your Original VVrit, that ſo they may each warrant the other.

The ſame Terme that you ſue forth your Exigent and Proclamation, you muſt then file a VVarrant of Attorney (for the Plaintiff who is your Client) with the Clarke of the Warrants, in ſailer whereof you commit manifeſt Errour in the proſecution of your

Cauſe

Cauſe, to the great hinderance and hurt of your Client, and danger of your ſelfe, by incurring the forfeiture of ten pounds, by a Statute made in that behalfe.

The forme of a VVarrant of Attorney is as follows, and muſt be Ingroſſed in Parchment.

London ſſ. A. B. puts in his place C. D. his Attorney, againſt T. F. lately of *London* Gentleman, otherwiſe called T. F. of S. in the County of *Glouceſter* Gentlemen, of a Plea of Debt: Thus upon ſpecialty.

In an Action of Treſpaſſe thus:

Dorſet. ß. G. W. puts in his place T. F. againſt I. L. lately of *Blandford* in the County aforeſayd, of a plea of Treſpaſſe. And the like in other Actions.

The Exigent and Proclamation being returned, you muſt then file the Proclamation with the *Cuſtos brevium*, and if you file the ſame or any other Writ there, before the returne be paſt, or upon the return day, then you muſt pay nothing for filing the ſame; otherwiſe every VVrit payes 4 d.

VVell experienced Practicers know how to ſave many of their *Poſt diems*, by having their VVrits made ready in an early manner.

In caſe of not filing your Writ or VVrits, in or of the ſame Terme they are returnable, they force you to pay when you file them with the *Cuſtos brevium*, for the *Poſt terminum* of them, which is 20 d. for every VVrit, every Terme the ſame is unfiled, except Exigents, for which you pay onely one *Poſt terminum*, which as aforeſayd, is 20 d.

Its very unſafe in relation both to your ſelfe and Clyent, to keep your VVrits unfiled (the filing of them

them being the ſubſtantiall warranty for the proceedings had upon them) leaſt a Cavear be obtained from ſome of the Judges in that behalfe, which is called a *Ne recipiatur.*

The Exigent being returned by the Sheriff of the County, and you being willing to procure proceſs of out-lawry againſt the Defendant to Arreſt him, upon the ſame he being out-lawed, you muſt then carry the Exigent ſo returned, to the Clarke of the out-lawryes, for the time being, and he will make you a Writ or Writs, into any County you ſhall deſire him, where you can any wayes diſcover the Party to be, or any Eſtate of his, either in Lands or Goods, yea into ſeverall Counties at one time; becauſe thoſe Writs are as well on the behalfe of the King, as for the Plaintiff.

There be two ſeverall Writs of *Capias Utlagat.* the one called a Generall *Capias Utlagatum* being for the apprehending of the body of the Defendant only: The other Eſpeciall, being againſt his Body, Lands, and Goods.

You having now the Exigent in your hands, ready to file, I thought fit to let you know the accuſtomed Fees for ſuing the Outlawry out, and Proceſſe thereon.

The Fees of the *Capias Utlagat.*

THe filing of the Exigent with the Clark of the Outlawries in the ſame Term, it is returnable, payes 1 *d.*

If it be with a *Poſt Terminum.* payes 20 *d.*

The Generall *Capias Utlagat.* payes 10 *d.*

The Speciall, payes 2 *s.* 4 *d.*

The ſeale of either, payes 1 *d.*

The fee of the Attorney ſuing it forth, 3 *s.* 4 *d.*

Severall wayes there are to diſcharge and avoide the ſame as occaſion ſerves, whether the party be taken or otherwiſe. The

The first and most usuall way is, to reverse it by Error, found in the returne of the Exigent, which may be committed many ways, and is not unfrequent either by mistaking the County dayes, in not allowing sufficient time between any of them, or in misnaming of the person, or omitting or mistaking of the Sheriffs name to the same Writ or Return, or by words which will beare no signification, or otherwise, as Experience and Practice will better instruct you: And secondly by any Error to be found in the Return of the Proclamation, which may be committed many wayes, as aforesaid

Likewise for want of filing the Proclamation with the *Custos Brevium*, as also for want either of the Return, or a due Return or Mis-entry, or mistakes, either in the originall *Capias*, *Alias*, and *Pluries*, afore recited.

For all which there must be diligent search with the *Custos brevium*, or in the other Offices where the proceedings have been.

Upon the finding of any sufficient Error, either in those or any other the proceedings: Then the file of Writs, in which said matter of Error in Writ is filed, must be brought by the *Custos brevium* into the open Court, there to be seene and perused by one of the Judges of the same Court, and the Errors to be allowed, or disallowed, according to his discretion and judgement.

Upon Reversall of an Outlawry for want of Proclamation in all Cases, and for any other default, if the debt or damage amount to 20 *l.* or above, there must be speciall Bayle entered by the Defendant with Sureties to answer to the Plaintiffs suite, and pay the debt and damage demanded, or yeild his Body to Prison, if the Defendant shall be condemned in the Action which Bayle must be taken out into the Remembrance

membrance in the ſame Prothonotaries office, where the ſame is reverſed. And then if the party outlawed be taken, and arreſted, or feare to be ſo, upon notice of an Exigent againſt him, he may have a Writ of *Superſedias* directed to the Sheriffe of the County where he is, or feareth to be taken for his diſcharge, which Writ is to be made and ſigned in the ſame Prothonotaries Office where the Outlawry was reverſed.

The Outlawry thus reverſed, the Defendant is bound by his Attorney to appeare, and to accept of a Declaration at any time within two Termes then next following after the ſaid reverſall, and then to anſwer according to courſe of Law.

Upon the reverſall of every Outlawry, the Attorney ought to have a note or Certificate thereof from the Prothonotarie to the Clark of the Outlawries, that no further Proceſſe may be made againſt the Defendant upon the ſame, and to ſee the Outlawry booke diſcharged, for which he muſt pay 2 *s.* 8 *d.*

The Fees of the reverſalls according to the occaſions are uncertaine, but the uſual and accuſtomed fees follow.

For ſearch and Copie of the Outlawrie, 8 *d.*

For ſearch with the *Cuſtos brevium* for every particular Terme you need to uſe, 5 *d.*

For carrying the bundle of Writs to the Hall, 2 *s.* 9 *d.*

For putting in the Bayle, 6 *s.* 4 *d.*

To the Boxe. 1 *s.*

To the Prothonotarie for Entring the Reverſall upon inſufficiency of the Return, 8 *s.*

For the Judges fee, 4 *s.*

To the Clark of the Outlawries for diſcharging the Booke, 3 *s.* 6 *d.*

For the *Superſedias*, 2 *s.* 7 *d.*

For the allowing thereof with the Sheriff, 2 *s.* 4 *d.*

Ag

An Outlawry alſo may be reverſed, although there be no Error in Return or Entries of the Exigent or Proclamation: and although the Proclamation be filed with the *Cuſtos brevium*; as namely, if that the ſame Proclamation were not awarded according to the forme and effect of a Statute, in that Cause provided into the County, and the Defendant named of the Pariſh where he had been reſident, *infra annum & diem* then next before the ſame Suite was begun, and commenced, or that the Defendant be miſnamed therein, in his Sirname, Degree, or Myſterie. And this Reverſall is to be done by way of a Plea, drawn by a Clark to that purpoſe; for which you ſhall finde preſidents in the book of Entries, to which pleas the Attorney Generalls hand muſt be procured; but this way as being both very troubleſome and chargeable, is much out of uſe.

An Outlawry may be alſo reverſed by the Kings Generall pardon, which is uſually granted at every Parliament, if ſo be the Defendant were outlawed before the day thereby limited, or by a ſpeciall pardon, which muſt be done by way of plea, and *Scire facias* directed to the Sheriffe of the ſame County, wherein the Action was firſt layed: And if the Sheriffe do return a *Scire feci* upon the ſaid *Scire facias*, then you ſhall need but one Writ of *Scire facias*; if not, then you muſt have two returned with *Nihil*, &c. in this manner.

The within named *A. C.* (the Plaintiff) hath nothing within my Bayliwicke, by which I am able to make known unto him, nor is found in the ſame.

D. L. Knight, Sheriffe.

Theſe *Scire facias* are to be drawn by the Prothonotaries Clark, and then entred into a remembrance in the ſame office, and a *Superſedias* made, and a Certificate alſo made, as above from the Prothonotary to the

the Clark of the Outlawries, that from thence-forth no further Procelle may be made againſt the Defendant, and alſo entered upon Record.

And note in this Caſe alſo, the Defendant muſt by his Attorney appeare, and anſwer the Plaintiff in his Action, but no Bayle need be put in.

The Fees thereof.

For the Copie of the Exigent,	8 *d.*
The two *Scire Facias* and Seales,	5 *s.* 2 *d.*
The Returns thereof,	2 *s.*
The filing of them,	8 *d.*
The taking out in the Remembrance,	1 *s.*
The Copies,	3 *s.* 4 *d.*
The Prothonotary,	5 *s.* 4 *d.*
The *Superſedias*, and allowing thereof,	4 *s.* 11 *d.*
The Certificate,	1 *s.*
The Clark of the Outlawries,	2 *s.* 8 *d.*
The Attorneys Fee,	3 *s.* 4 *d.*

An Outlawry alſo may be reverſed by writ of Error upon Error in the proceedings, as the want of the Warrant of Attorney, the not filing of the originall, *Capias*, *Alias*, or *Plures*, and then your Courſe therein follows.

In the firſt place you are to have a copie of the Exigent, or *Capias Utlagat.* which is to be carried to the Curſiter of the County where the Action lyes, and where the Defendant is returned outlawed, to have a writ of Error made thereupon, which Writ muſt be brought under Seale to the Lord chiefe Juſtice of the Common Bench, or his Clark of the Errors for the time being, with the copie of the Outlawrie, and thereupon the Clark of the Errors of the Common Bench makes a *Superſedias* to the Sheriff of the County, where the Defendant either is, or feares to be arreſted for his diſcharge, and from him pro-

cure a Certificate to the Clark of the Outlawries (as formerly) the charge of the *Supersedias* is 33 *s.* 4 *d.* beſides the ſearch and copie of the Outlawry; And in this caſe the Defendant by his Attorney muſt appeare upon a new originall ſued out by the Plaintiffe within two Terms; And this is the moſt uſuall and ready way (though moſt chargeable) for diſcharging of an Outlawry (eſpecially in the Vacation) if the Defendant be either under Arreſt, or feare to be arreſted; but bayle muſt be put in, if the Debt or damages amount to 20 l. as in the like caſes before recited.

It's requiſite in this caſe the Attorney ſhould take mony of the Defendant for the Declaration, and his fee againſt the next Terme, at the time of the deliverie of the *Superſedias* (eſpecially if the Defendant be not well known unto him) and a Warrant under his hand to appeare, plead, or confeſſe the Action; for many times the Attorney is put to a great charge and trouble to finde out his Client.

Theſe are the Generall and particular inſtructions and directions to ſue to the Outlawry, and to arreſt thereupon, and how to reverſe the ſame both in the behalfe of the Plaintiffe and Defendant; beſides which there are other wayes of ſuing by meane Proceſſe, when they proceed no further then to the taking out of an Originall, and then make an arreſt upon the *Capias*; or in caſe the Party cannot be taken before the return of the ſaid *Capias*, then you may take out a *Capias* by continuance, which coſts you 10 *d.* to the Phillizer, and 7 *d.* for the Seale.

And having now dilated at large the ſeverall proceeds in actions of Debt, in order to Outlawry, or otherwiſe, and likewiſe the reverſall of ſuch Outlawries, whereby the Defendant comes to appear, it now reſts we ſhould ſhew how they may declare, and in what

what manner those Declarations must be; But before we proceed so far, it will not be amisse to insert some few rules or observations as a guide for the Attorney, both in the taking of instructions, and drawing his severall Declarations in other personall actions, as follows.

IN actions of Debt, either upon specialty, as Bond or Bill, or for Rent arrear upon a demise by Indenture, or otherwise, or upon an action of Covenant, you must have recourse to the severall writings, by which you warrant your said actions, and the circumstance of time, either for the date of the said writings, the place, the quantity of what Rent arreare, for what time, when Commencing and Ending, and what particular Covenant; if but one in an action of Covenant, you intend to insist on for the laying of the breach aright, and likewise you must enform your selfe how your Clyent came to be Entitled to the Debt, whether as Obligee, or by some assignment, by Letter of Attorney, or otherwise, as Executor or Administrator of the Obligee: And if for arreare of Rent, whether the party came to it by meane assignment or reversion, in which Cases you are to inform your selfe of the Attornment of the Tenant, and for what time the Rent is arreare, and looke what right the immediate Lessor or Lessees have the same, is in their assignes.

If Rent grow due by Lease-paroll from yeare to yeare, which is so called, in respect there is nothing under hand and seale, but barely by word of mouth, to signifie the Demise, you must know the time of the Demise, ascertaine the thing demised the Term, The rent and time of payment of it: The time of the Lessees Entry, and what Rent is arreare by the Defendant.

If in Debt upon an Award.

YOu are to inform your ſelves of the Arbitrators names, the time of the Award made, and what was Awarded, and if you can get the Award it ſelfe, it is farre better.

Note that if any under the Age of one and twenty yeares, either in this or any other Action, Commenced Suite, he muſt come in by his Guardian, in proper Perſon to be admitted, which coſts two ſhillings the Admittance, otherwiſe if the Defendant tak: notice of his Nonage, and that he appeare not by Guardian but otherwiſe, the Defendant may plead it in Barre to his Action.

And now take ſome few Inſtructions in other Actions, as Treſpaſs upon Aſſault and Battery, falſe Impriſonment, *&c.*

In the firſt place, take notice of the time, or any time after the Treſpaſs done, before the Teſte of your Originall of the Treſpaſs, by Aſſault and Impriſonment, and the place where (although I think neither of them Locall) together with the time, the Party remained Deceaſed or Impriſoned, and what it coſt him by way of Fine or otherwiſe, to be releaſed.

And note for the Aſſault of the Wife, Children, or Servant, the Father and Maſter, as wel as the Servant, may bring an Action, for the loſs or hindrance he receives thereby.

For Treſpaſs either in Cloſes or Houſes, or chaſing of Cattell, or fiſhing, where another man hath right, as followes: and firſt,

For breaking your Cloſe, the certainter you lay it, in naming the place, the time of the Treſpaſs done, and with what Cattell, and how long the Treſpaſs continued,

continued, and what Corn was consumed and eaten up, or trodden down with the Feet, and what Grass, and of what value; and it were to be wished, in Relation to the saving much Charge, there were the same course taken in the Court of common Bench that is done in the upper Bench; that is, To ascertain the place of the Trespass done, by giving it his particular name and bounds, which if done in the Declaration, would prevent pleading the common Barre and new Assignment, and this with much ease, by saying, (The Close of *A.* called *C.* in *D.* he broke, *&c.*)

If any Trespass done for chasing of Cattel, you must lay the the time and place of chasing, wurrying, and beating your Cattell, what Cattell, and how many they were, and what you were damnified by it, either in Ewes casting their Lambs, or being torne with Doggs; or Kyne in loosing their Milke, casting their Calves; or Mares in the loss of their Colts, and the like.

An Action of Trespass also lyes against one, for the rescuing of his owne Cattell out of your hands, in case you are driving them to the Pound, for Trespass or otherwise, or in case he breake the Pound where you had Impounded them, and drive them away; in both which cases, you must shew what Right you had to take them, either as Damage-Feasant, or that you did distrain them for Rent or Services Arreare.

If your Trespass be for taking away of Goods or Chattels, out of your ground or house (albeit Money) and such things are commonly taken out of your house, they are to be named particularly, and their value, if Mony in a Bagg, the particular Sum.

In case a man take away a Ward, an Action lyes wherein you must shew, how the Plaintiff came to have

Right to the Ward which the Defendant detaineth, as if it be Knights ſervice, by his Fathers holding of ſuch a Mannor of the Plaintiffs, the Lands he dyed ſeized of, *&c.* Shew the manner of the Tenure, and that the Childes Father dyed in the Homage of the Lord, whereby the Right of the Childes Marriage belongeth unto him: You muſt likewiſe know the time and place of taking him away, the Age of the Ward, together with the Damage the Plaintiff ſuſtained.

If by ſocage Tenure the Lands holden, then the next of kindred (to whom the Land cannot diſcend) hath the like Action for his Ward, wherein he muſt ſhew what he dyed of in Socage-Tenure, and of whoſe Mannor it was holden, together with the time the Plaintiff was ſeized of him, and the time, manner, and place of his taking away.

In an Action of Treſpaſs for ſpoyling or turning your Water-courſe, you firſt ſhew how he held the Water-courſe, from, where, and whither the Water-courſe came, and that it had uſed ſo to come time out of minde; then what benefit it did the Plaintiff, as in making his Grounds fertile, and for watering his Cattel; then how the Defendant did ſtop that Courſe, and with what, and the time by reaſon whereof the Plaintiff hath loſt the benefit of it for ſuch a time; or if the Ground be overflowed by the like courſe, then ſhew how the Defendant, having ſuch a water-courſe or Mills, lying neer the Plaintiffs Ground, did open his Flud-gate and ſtopped the water-courſe, and cauſed it to overflow the Banks and drown the Lands.

In Actions of account, take theſe enſuing.

IF an Action be brought for Arrerages of account, as where divers Reckonings are between two Perſons,

ſons, and they account together, and upon that account the one is found indebted to the other; then know the time when the Parties accounts were, and before whom, if they had any Auditors, and what the ſame was, he was to account for, and the time when it was appointed to be paid by the Auditors.

If you charge any as Receiver for moneys delivered, name the time when, and the place where, and the Perſon that delivered it, and the Sum that was delivered, if he received it for the Rent of any thing, it is beſt to name the thing for what it was.

If you charge him as a Bailiff of Lands or Goods, ſhew from what time he hath been ſo of the things under his charge, and of all things he received, and how long ſince he was Bailiff.

If you charge him as Bailiff for any thing he hath ſolde for you, recite the thing to be accounted for.

Detinue.

IF you would bring an Action of Detinue for any thing that you have bought, and cannot have, ſhew the time when you bought it, and what you paid, and the time for the delivery of it.

If you have delivered any thing to any man, and cannot have it again, you may have the like Action, knowing the value of the thing delivered, and to what uſe you did deliver it, and what time was appointed for the redelivery of it, in caſe it be for Writings, either upon the delivery, or that it came to the Defendants hands by chance, know the Date and the effect of the Writing, the time when the Plaintiff was poſſeſſed of it, and the time when the Defendant had it.

In Actions of the Case, take these ensuing

FIrst for Trover, which is for the recovery of Goods that come to any mans hands by chance or not in a warrantable way; know the nature of the Goods, the value of them, the time and place when and where the Plaintiff was possessed of them, and how they came to the Defendants hands.

In an Action of the Case for words, if the Plaintiff have borne any Office of credite, it would do well to recite it in the Declaration, and know the time and place of speaking the words, either to the Plaintiff, or of the Plaintiff, together with what other Circumstances may make to aggravate the words spoken by the Defendant.

In an Action of the case, where felony is laid to ones charge, and the Party carryed before a Justice of *Peace*, and so bound over to the Assizes; be sure in this case to take notice of the time when, and the place where he laid the Felony to him, and for what, and the Constables name that detained him, and the Justices name before whom he was brought, and the bayling or committing of him till the Assizes, the day of the Assizes held, and before whom the Coppy of his Inditement, and his Acquittall thereupon.

Upon an Escape upon a mean Processe.

IF the Bailiff have Arrested the Party, you are to sue upon mean Process, and either for favour or Bribes, release him afterwards, so that you loose thereby the benefit of your Arrest. For Instructions.

First

First know what cauſe your Clyent had againſt the perſon ſo Arreſted, and for how much money, and then ſet forth, that for the recovery thereof, he tooke out ſuch a Writ, returnable ſuch a time, directed to ſuch a Sheriff, whereupon a Warrant was made and delivered to the Bailiff; by vertue whereof he Arreſted the Party, and ſuch a day releaſed him.

When you buy any thing upon Warranty, whether it be living Cattell, or any Chattels or Goods that are warranted to be ſound, uſefull, and good, or that ſhould contain ſuch a number, either of Loades, Pounds weight, or Meaſure, and it holdeth not out ſo, an Action lyes, in which caſe you muſt take notice of the quantity and quality of the thing, when ſolde, and for how much, the time and place, and that the Defendant did warrant it to be good. *&c.*

An Action likewiſe lyes againſt a Farryer, who for a Sum of money undertakes a cure, and wholy neglects it, or uſes contrary or poyſonous Medicines, whereby your Horſe dyeth or is worſted.

And likewiſe againſt a Smith that pricks your Horſe in ſhooing of him, whereby he becomes lame and unuſefull, and you looſe the benefit of his Service.

And where a Taylor taketh a quantity of Cloath or Stuff to make a Suite, and cutteth it ſo ſcanty as that it will not be for the Parties uſe.

And likewiſe for many other frauds and deceits, both in Shop-keepers, Artificers, and men almoſt of all Myſteries and Profeſſions.

Having thus given ſome brieſe directions what to take by way of Inſtruction and Information for the Attorney in behalfe of his Clyent, in order to drawing a Declaration, I ſhall now proceed to the ſaid Declaration, Iſſue, and Judgment, after appearance made by Super-

ſedias

sedias to the Exigent, *or upon any other appearance upon Arrest had by vertue of mean Process.*

THe Defendant appearing by putting in speciall Bayle to the Action, or otherwise upon the *Capias*, *Alias*, or *Plures* in the Phillizers Office, where the same was sued forth, or by *Supersedias* to the *Exigent*, brought and allowed with the Sheriffe, you must informe your selfe what Attorney doth appeare for the Defendant; that done, you must declare either upon Bond, Bill, Indenture, Trespas, or otherwise, as your Case requires, alwayes observing this rule, that there be no difference between the Additions in the Writs or Summes therein contained, and your Declarations, for they must literally agree, the one being a Warrant for the other; for if there be Variance, and the Defendant take notice of it, he may plead that variance in abatement to the Writ.

And for the drawing of those Declararions, it requires the skill, studie, and experience of an able Clark of the *Prothonotaries* Office, and some helps there have been formerly by Books of *Entries*, which being at an Extraordinary rate, have not been so much in use amongst Attorneys, but there is now a Booke extant of select *Presidents* in *English*, for almost all Declarations, out of the VVorks of the learned *Prothonotarie*, Mr. *Brownelow*, and is of small price, sold by Mr. *Twyford* in *Vine-Court* Middle Temple, to which I refer you.

Having your Declaration drawn, you must enter it upon some roll of the Court, in one or other of the *Prothonotaries* Office, either by your selfe or some Clark of the Office, who must see it put in the Docquet of that Office, and there to put the number Roll, and so enter it in your owne Docquet book, and keep your number-roll, that so you may have recourse to

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the Roll afterwards to enter up your Continuances, if the Cauſe continue above one Terme before Judgment or tryall had.

By the courſe of the Court the Defendants are to anſwer the ſame Terme they appeare, if the Writs be returnable at the beginning of the Terme, eſpecially in Iſſuable Termes, which are *Trinity* and *Hillary*; but in other Termes, if the action be not laid in *London*, the *Defendants* have for the moſt part imparlance, or time to plead till the next Term.

And here take notice there be two kinds of imparlance, the one Generall, the other Speciall; after a generall imparlance had, the Defendant cannot plead in abatement to the Writ, Excommunication, or the like, nor any Priviledge out of another Court as a priviledged man.

But after a ſpeciall imparlance many pleas may be pleaded, which after the generall imparlance cannot be allowed: If a ſpeciall imparlance be prayed, you muſt take for the Entry thereof of the Defendants Attorney the ſumme of 2 *s.*

If the Attorney for the *Defendant* upon receiving a Declaration do not crave that the Condition of the Bond may be entred with the imparlance, and doe not pay for the ſame, then he is debarred from pleading Conditions performed at any time after, without moving the Court, and paying 5 *s.* to the Judges Boxe.

Rules to anſwer muſt be entred in ſome of the Remembrances in one of the *Prothonotaries* Office, which is done briefly thus.

Herefordſ.

Hereford. ſſ. *An Imparlance between A. B. Plaintiffe, and L. D. lately of S. in the County of H. Yeoman, otherwiſe called A. B. of* L. *in the County of H. Yeoman, Defendant, of a plea of debt.*

WHich being thus written, you put either in the Margent, or overhead your rule, which is, Unleſſe the Defendant plead within (ſome few dayes) let Judgement be Entred.

And theſe are entred either by the Secondary of the Office, where the Plaintiffs Attorney enters his Cauſes on the Bill of pleas; or as before I have ſaid, by the Attorney or Clark for him, upon the common Remembrance, for which there is 4 *d.* and upon the Expiration of the ſame rule, no Plea being brought in, you muſt ſigne Judgement with the *Prothonotarie* for want of anſwer.

If the Attorney for the Plaintiff do not declare againſt the Defendant upon his appearance within reaſonable time in the Term after the appearance made, then the Attorney for the Defendant may alſo enter a rule in the Bill of Pleas againſt the Plaintiff, to declare, and thereupon cauſe a *Non proſecutus* to be entred, which muſt be ſigned with the *Prothonotary*, and Coſts given for the unjuſt vexation; for which Coſts he ſhall have Execution againſt the Plaintiffe. But if the Plaintiff ſue as Executor, or Adminiſtrator, he ſhall pay no coſts upon any Non-ſuit.

The imparlance is a time of leave, or licence given from one Terme to the Terme ſucceeding, by the Plaintiff to the Defendant, either to plead to his action brought, or to let it paſſe by default; and to that purpoſe the next Terme after the imparlance had as aforeſaid, the Attorney for the Plaintiff may call to the Attorney of the Defendant to anſwer to the Declaration

Declaration, and if he do not plead in due time, give him rule to answer, which done and the Rule expired, he may enter Judgment as before is declared, either by *Nichil dicit*, for the Debt and costs as is fit and very usuall in cases before expressed, if Debt.

VVhere the Defendant pleads generall Issues or Pleas as is most usuall, and now directed to be done by a Statute lately made, whereby the speciall matter, if any be, may be given in Evidence, as in an Action of Debt, that he owes nothing by the Country, *&c.* Or to Debt upon Bond, or Bill penall, that he did seale and deliver through threats, *&c.* Or by reason of hard Imprisonment, or that it is not his Deed, or that he hath performed conditions, or the like; or in Action of the case, the generall Issue not guilty for words, if upon promise, that he did not assume, *&c.* And for not guilty likewise in Actions of Trespass or Battery. In these are the like cases of common Pleas or Issues, there is no more requisite, but that the Attorney for the Defendant, do put his Hand to the Plaintifs Attorneys *Docquet* Booke, and that done, the Plaintifs Attorney doth draw up the Plea, and make a copy of the Issue, and there delivereth it to the Defendants Attorney, who must receive it, and pay for entring such his Plea, and for the Booke, and then usually they give warning of a tryall, unless they forbeare tryall the next Assizes.

But if the Defendant plead specially (which will not be so usuall as formerly) he is to bring it to the Plaintifs Attorney under a Serjeants hand, and if the Plaintif reply specially, either by traverse or otherwise, the Replication is also to be under a Serjeants hand, and he is to give it to the Defendants Attorney.

So if the Defendant demurre to a Declaration, it is also to be brought under a Serjeants hand.

Its moſt generall, that the Iury ariſe out of that County and Town or Pariſh where the action is layd for tryall, unleſſe it be removed by pleading, as where an action is brought upon a Bond or Bill, and the action layd in *Herefordſhire*, and the Defendant pleads conditions performed, for the money payd at *Stow in Glocesterſhire*, according to the condition, here the *Venire* ſhal not ariſe in *Hereford*, but in *Stow* in the county of *Glocester*, and thither ſhall the record be carried to be tried.

If an action upon the Statute of *Hue and Cry* be brought againſt a hundred for a robbery done within the hundred, the *Venire* ſhall not ariſe in that Hundred, where the fact was done (for then they would be Iudges in their own cauſe, which is againſt common reaſon) but the *Venire* ſhall ariſe in the Hundred next adioyning, and to this purpoſe, the *Venire* muſt be awarded ſpecially, which is worthy obſervation.

After the Iſſue ioyned and entered, there may be ſeverall cauſes of challenge, as where the Defendant is of kindred to the Sheriff, either by blood or marriage, the Plaintiff may pray the *Venire facias* may be directed to the Coroners, and if the Defendant agree thereto, it ſhall be accordingly. This muſt be ſpecially awarded upon the Iſſue roll, and in the awarding of it, it muſt be ſet down and derived how the Sheriff is of kindred, and then is the *Venire facias* directed to the Coroners, and this is called a challenge to the array.

You cannot make a challenge to the Iury, till after they are called, and before they are ſworne, for afterwards it comes too late.

If your tryall be by *Niſi prius* at the Aſſizes in the Country, and your Iury appear not full upon the pannell, the Plaintiffs Attorny may crave a *Decem-*

tes

tes de circumstantibus, ten of the standers by to fill up the Iury, or a lesse number, according as is requisite, which *Tales* must be mentioned upon return of the *Postea*, and the judgment thereupon on the issue Roll.

And upon the Plaintiffs default, after the first Term the Defendants Attorney may bring the cause to tryall, by *Venire Facis*, by Proviso.

If at the tryall of any *Nisi Prius*, the witnesses of the Plaintif or Defendant will not voluntarily appeare, without being served with processe, to testifie the truth of their knowledge, in the matter of cause in question, then you may have a *Subpana ad testificand.* for the said witnesses out of the Prothonotaries Office, and therewith serve them, and compell them to appeare, the Fee whereof is, 2 s 7 d

VVhen you proceed unto your tryall, you must, having entred as before your Declaration with the Issue joyned in the Prothonotaries Office, you must make out a *Venire Facias* upon your Issue, and get it signed with the Prothonotary, and having sealed it, you must get it returned by the Sheriff of the County or City where you lay your Action, and upon return thereof, you must also sue forth a *Habeas Corpora*, which is made by a particular Officer of the Court, called the Clark of the Iuries, and deliver the same to the Sheriff in due time, that so he may warne the Jury, and get the same returned before the Assizes.

Note that if a cause be brought to tryall, and a *Habeas Corpora Juratorum* be delivered to the Sherif who summons the Jury, and if you for reasons best known unto you selfe, defer the tryal untill some longer time, and afterwards you think fit to bring it again to tryall, you need not be at charge of a second *Venire Facias*, but may take a copy from the *Custos brevium* of your first VVrit, if you keep it not in

your

your hands, paying him for it 8*d* and for the search of it 5 *d*.

Upon which Copy or olde VVrit, the Clarke of the Juries will make you an *Alias habeas Corpora*, or *Plures*, paying for it in Debt or Trespass. 10 *d*

And in other Actions, 15 4*d*

And for the continuance of it every Tearme 4*d*.

Then you must in suing forth your *Nisi prius*, ingrosse your Record in Parchment, *Verbatim*, according to the Copy of the issue made up, and the entry of it upon the roll, in the Prothonotaries office, and then examine the same with the Prothonotary, if it be upon an issue joyned the same Term, whose hand must be to it, and then carry the same to the Clark of the Treasury for the time being, giving him such fees for signing and making up the Record, as are hereafter specified.

But if the issue were entred of a former Terme then must you deliver the paper booke of the Issue to the Clark of the Treasury, who will examine the same by the roll, and make up the record thereupon; which done, and the same signed by him or his Deputy, you must seale the same with the Lord cheif Justice of the Court, for the time being, who hath a seal for that purpose, and then deliver the Record so sealed, together with the *Habeas Corpus Jur.* returned by the Sheriff to the Clark of the assize for te same County, where the matter is to be tryed.

The generall fees in an action of Debt, trespasse, &c. follow, as to making up the Record *s. d.*

For the *Venire facias* 2*s*. 7*d*.

For the return thereof, 2*s*. 4*d*.

For the *Post diem* thereof 4*d*.

For the *Habeas corpora Jurator.* and *Expedition.* 2*s*.

For summoning the Jury, 12*s*.

If

If in *London*, or a corporation but 4s. 4d.
For signing the Record with the Clark of the Treasury if the same exceede not 3. sheetes 2s.
For every sheet exceeding 4d.
For examining the *Jurato*. 4d.
For writing the record for every sheet 4d.
For examining the same by the Prothonotary 1s.
For the Seal 2s. 2d.

Having thus procured your Record of *Nisi prius*, you are to carry it at the time of the Assize and deliver it in to the clark of the Assize, and there pay the Judges fee, having retained your councell, and your Witnesses being in readinesse for the tryall of the Truth of your cause according to the Issue.

The Fees you are to pay at the Assizes are, as follow.

	s.	d.
For the Judges Fee in putting in the Record of *Nisi prius*,	11 s.	8 d.
To each councellour you retaine, at the least	10 s.	
For reading the Record	10 s.	
For the Marshalls fees	2 s.	
For the Jury eight pence a piece	8 s.	
To the Bailiff that keepes the Jury	2 s.	
For the Crier,	1 s.	
For the Oath of every Witnesse	4 d.	
For a *Non-suit*		
For a *Tales de circumstantibus*		
For a privy verdict		
For a Warrant of Attorny if the Attorny be absent	4 s.	

The fees do somewhat differ by custome in severall counties. But if the triall be had before the Lord cheife Iustice of the common Bench in *London*,

those are common fees to be added unto the former.

For the Greene-cloth	1 s. 6 d.
To the Bar-Keeper and Hall Keeper	2 s.
To the Iudges Groome or Foot-cloth-man	1 s.
To procure the Record to be read	
For Lights if the cause be tryed by candle light,	

The Assizes ended, your tryall being had, and Virdict passed for your Clyent, at the next Term following you are to call for the return of the *Postea* from the Clark of the Assize, and thereupon bring the same to the Prothonotaries Office to get costs assessed, for which end (if your charges have been extraordinary) you must bring a Bill of disourse-ments under your hand, otherwise not, and thereupon cause Judgment to be entred: For the Entry whereof, the generall Fees are as follow.

For the return of the *Postea*,	2 s
For signing the Costs.	1 s
For entring the Judgment if the Jury did fully appeare.	2 s 4 d
If there were a *Tales*, then more.	2 s
For the Copy of the Judgment.	1 s 4 d

Having thus far proceeded, you may now procure Process and Writs of Execution, by *Capias ad Satisfaciendum*, *Fieri facias*, *Elegit*, or otherwise, according to your desire, and as the nature of your Action brought, doth allow or require; wherein,

Note that the *Capias ad Satisfaciend.* is the taking of the Body only of the party in Execution, till he satisfie for the Debt and Damages; The *Fieri Facias* against the Goods only, and the *Elegit* against the Moiety or any one halfe of his Lands and Tenements, and

and all his Goods and Chattels (his Oxen and Plow-Cattell only excepted) To have and to hold the Goods as his own Goods, and the ſaid Moiety of the Lands untill his Debt and coſts ſhall be fully ſatisfied and payed. But note this, that after an *Elegit* Executed and filed, you can never have any other Execution; it being your own Election.

Note alſo, that if you firſt ſue forth a Writ of *Fieri Facias* againſt the Goods of the Defendant, and by vertue therof levy part of the Debt and not the whole, then you may have afterwards a *Capias ad Satisfaciend.* againſt his Body, or an *Elegit* for the reſt, but if you firſt Impriſon his Body by vertue of a *Capias ad Satisfaciend.* then you cannot have a *Fieri Facias* againſt the Goods, or an *Elegit*; if you have ſeverall Judgments againſt ſeverall men, for one and the ſame Debt, they being joyntly and ſeverally bound for the ſame; you may have two or three ſeverall Executions againſt them all, untill the Debt and Coſts be ſatisfied by one of them, but cannot have the whole of every of them; and if the Defendant be in another County, and not to be found in the ſame County where the Action was laid, then you muſt ſue forth a *Capias ad Satisfaciend.* into the ſame County where the Action was laid, and get the Sheriff to return upon it (that he is not to be found) and then ſue forth a *Teſtatum*, into the County where he is to be found: And thoſe Executions made immediatly after Verdicts, *&c.* Judgments had upon them are made by the Clarks of the Judgments, in the reſpective Prothonotaries Office, who keep the Judgment Papers, where they are tranſcribed.

We have now ſhewed you the courſe how to proceed to tryall, after Out-lawry reverſed on an appearance, in caſe the Defendant plead an iſſuable Plea, or indeed upon any other appearance made upon

mean Proceſſe: Only take notice of this, that if the Plaintiffs Action be juſt, and right, and for good Debts or juſt cauſes of Action; the Attorney for the Defendant ſhall do well to counſell his Clyent to yeild to Judgment, either by way of not being informed, Confeſſion, or otherwiſe, ſo that he procure ſtay of Execution againſt his Clyent for ſuch time as ſhall be agreed on by both Attorneys, which muſt be carefully looked unto by the Attorney of the Defendant in time, before the rule be on, and they take Judgment by default: And this he ſhall do by putting his hand to the Plaintiffs Attornys Docquet Book, in this manner.

I am not informed ſo that Execution be ſtayed till the Morrow after the holy *Trinity*.

Hereford ß. Bridges for *Lacie*. *Dowdeſwell*.
Dowdeſwell for *Hunt*. *Rot*.

After which you draw up the Judgment ſhort in Paper and carry it to the Prothonotary, who is to tax Coſts, and for that you pay him 3 *s* 4 *d*. if in Debt upon one ſingle Contract, and then you are to take it out (the Plaintiffs name, and the Defendants and the Attorneys for the Plaintiff, in the Judgment Book) after wich you enter it upon ſome Roll of the Court in the Prothonotaries Office, and keep the number Roll by you to your Docquet Book, that ſo upon all occaſions you may have ready recourſe to it; and the Plaintiffs Attorney muſt be carefull of keeping together the Copyes of all his Judgments, that ſo when he hath occaſion to renew them by *Scire Facias*, he need not be driven to take out new Copyes, which are chargeable out of the Treaſury.

And note, that in caſe the Judgment have continued above a yeare and a day, and no Execution taken out, he muſt be put to renew it by *Scire Facias*, ſo

ſo muſt he likewiſe do, in caſe the Plaintiff or Defendant dye.

And in caſe of any Judgment had in Debt, againſt an Executor or Adminiſtrator, you can have but a *Fieri facias* of the Goods of the Party deceaſed, in the hands of the Executor or Adminiſtrator, but if the Sheriff return upon your *Scire facias* a *Deveſtavit*, then ſhall you have a *Fieri facias* of the proper Goods of the Executor or Adminiſtrator; and if the Sheriff return that he hath no Goods, you ſhall have a *Capias* againſt his Body, and after an Exigent, and ſo to the Outlawry after Judgment if you pleaſe, in caſe you finde him not eaſily to be Arreſted.

The courſe whereof is thus:

FIrſt, then he muſt have a *Capias ad ſatisfaciendum* to be made for the Debt and Coſts, if it be in debt; or after a Judgement had for Treſpaſſe for the Damages and coſts, as in the Judgement with which muſt be made into the ſame County where the Action was layd, and get the ſame returned by the Sheriff, with (*That he is not found, &c.*) Then he muſt carry the ſame to the *Exigentor* of the ſame County, who will make an Exigent thereupon, which muſt be delivered unto the Under-ſheriff to be executed and returned accordingly, as other *Exigents*.

NOte that in this Caſe there ſhall need no Declaration at all againſt the Defendant, to give him notice thereof.

The *Exigent* being returned, you may ſue forth the Proceſſe of Outlawry from the Clark of the Outlawries, either generall or ſpeciall, as in other Actions afore ſpecified; whereupon the Defendant, if he

be arrested, cannot be discharged without satisfaction to the Plaintiff, and reversing, or pardon of the Outlawry; this is the utmost and last proceeding the Common Law doth or can afford in any Case whatsoever

The Fees to the Outlawry after Judgment, are as follow.

	s. d.
FOR the *Capias ad satisfaciendum*	1 - 1
For the returne thereof	0 - 4
For the *Post diem*	0 - 4
For the *Exigent*	1 - 7
For the Returne thereof	0 - 4
For the generall *Capias utlagatum*	0 - 11
For the speciall *Capias utlagatum*	2 - 2

Note that in this Case you may have either generall or speciall *Capias utlagatum* into as many severall Counties as you will, either in *England* or *Wales*, but observe further, that no Processe whatsoever issuing or to be made in or out of the Common-Pleas, can be directed or executed to or by any Under-sheriff in *Wales*, but onely *Elegits*, *Extents*, Proclamations upon the meane Processe as before: *Capias utlagatum*, generall or speciall, or upon Outlawries after judgement. If the Defendant be Outlawed after Judgement, if he cannot be arrested within a yeare and a day, yet the Plaintiff shall not need to renue Iudgement by way of *Scire facias*, but otherwise in case he be not Outlawed he must, as I before recited.

The

The manner of renuing the Judgement by Scire facias.

FIRST, The Plaintiff muſt ſue forth a *Scire facias* againſt the Defendant in the County where the Action was layd, directed to the Sheriff, to give notice to the Defendant to appeare and ſhew cauſe why the Plaintiff ſhould not have Execution againſt him, for the Debt and coſts formerly recovered: To which Writ if the Defendant can ſhew any good cauſe as a Releaſe, ſatisfaction, or any other iuſt cauſe or ſufficient diſcharge, then he may appeare, and plead in Bar his diſcharge.

If the Defendant upon returne of the ſame *Scire facias*, do not forthwith appeare and plead, the Plaintif ſhall have preſent Execution againſt him.

But if the Defendant, after the ſayd Iudgement obtained, and before ſatisfaction of the ſayd Debt had, unleſſe the Plaintif procure a *Scire facias, &c.* to be returned upon the firſt *Scire facias* againſt the Executor or Adminiſtrator, then the Plaintif muſt ſue forth a ſecond *Scire facias* againſt the Executor or Adminiſtraror of the Defendant, and upon their ſecond default, the Plaintif ſhall have preſent Execution againſt them, having after the returne of the ſayd *Scire facias*, taken it out, and given a Rule in the Remembrance in the *Prothonotaries* Office to this purpoſe (that unleſſe the Defendant plead ſomething to this Writ by (ſuch a day) Execution is to be made by default.

NOte that theſe ſeverall Writs are to be made and ſued forth together with the Execution, in and out of the ſame *Protnonotaries* Office, and where

the first Iudgement was entred: And the sayd Writs of *Scire facias*, together with the new Iudgement had thereupon, to be entred upon Record, in the same Office, and the VVrits carefully filed with the *Custos brevium*.

The severall Fees are these.

For search in the Docquet for the Number-Roll,	4 *d.*
For searching in the Treasury,	4 *d*
For the Copy of the Iudgement usually	2 *s.*
For the Clark for making the Writ,	8 *d.*
To the *Prothonotary* for signing of it	1 *s.* 4 *d.*
For the Seale of it,	7 *d.*
For the Return with a *Nichil*,	1 *s.*
For the Returne with a *Scire feci*	2 *s*
For entring the Iudgement upon default, upon one *Scire facias*,	2 *s*
If upon two *Scire facias*,	4 *s.*
For the Copy,	2 *s.*
For taking the VVrits into a Remembrance,	1 *s.*
For the Rule	4 *d.*
For a VVarrant of Attorney.	8 *d.*

Upon these proceedings duly and truely performed, the Plaintiff may have Execution against the Defendant, by *Capias ad satisfaciendum*, by *Elegit*, or otherwise, at his pleasure (as is before told you in Writs of Execution;) And if the Defendant be dead then there shall issue against the Executor, a *Scire facias de bonis testatoris*.

Thus

THus far having proceeded in Debt againſt the Defendant himſelfe, his Executor, or Adminiſtrator, either by way of *Scire facias* or otherwiſe, we now proceed to the proſecution to Iudgement and Execution upon ſpeciall Bayl; wherein obſerve theſe Rules following.

IF the Defendant be arreſted by meane Proceſſe, as *Capias*, *Alias*, *or Plures*, and the Plaintiff holdeth him not ſufficient to anſwer the Debt or Damages contained in the VVrit, the ſame amounting to 20 *l.* or upwards: In this Caſe the Plaintiff upon the returne of the VVrit, may crave ſpeciall Bayle to be put in to his Action, which the Defendant muſt put in before ſome Iudge of the Court where the Cauſe depends, who will accept of ſuch Bayle as the validity or weight of the Cauſe doth require, or in his diſcretion ſhall be thought fit.

If the appearance be upon arreſt, by the *Capias*, *Alias*, *or Plures*, then the Bayle muſt be taken, and entred by the Phillazer of the ſame County where the Action was layd, and who made the ſayd Proceſſe.

BUt if the Defendant be arreſted in the Maior, Bailiffs, or Sheriffs Court, of any City or Corporation, and the Defendant by any Writ of Priviledge, or *Habeas Corpus*, do remove the ſame out of the ſame Corporation to be tried at Common Law above.

Then the Bayl being taken by any Iudge of the ſame Court, muſt be entred in the ſame Prothonotaries office, where the ſaid Writ of priviledge or *Habeas corpus* Iſſued and was ſued out.

THe Defendant being as aforeſaid bayled, the Plaintiff may proceed and declare againſt him

as

as the nature of his Cauſe or Action ſhall require, obſerving the ſame forme and manner in every reſpect or point to procure Judgement and Execution by way of *Nihil dicit*, *Non ſum informatus*, Confeſſion of the Action, tryall by *Niſi prius*, or otherwiſe as is formerly ſet down and expreſſed by *Supersedeas*.

And the Plaintiff having obtained judgment againſt the Defendant and perceiving that he is not eaſily to be arreſted and taken in Execution, or not ſufficient to ſatisfie the ſame; but knoweth the Bayl to be better able, then the Plaintiff may at his choice leave the Defendant and proſecute the Bayl in this manner following.

FIrſt the judgment being entred, he muſt ſue forth an Execution by *Capias ad ſatisfaciendum* againſt the Defendant, directed to the Sheriff of the ſame County where the action was firſt layed, and upon the return thereof, get the ſame returned by *Non eſt inventus*, that is, (he is not to be found) Then he muſt procure a Writ of *Scire facias*, againſt the bayl to ſhew cauſe, why the Plaintiff ſhould not have execution againſt them according to the Recovery or judgment ſo had againſt the Defendant, upon which Writ if the Sheriff do return a *Scire feci*, then there needs no ſecond writ to be made, but if he return a *Nihil*, then there muſt be a ſecond Writ of *Scire facias*, which being returned likewiſe with a *Nihil* then the two Writs of *Scire facias* muſt be taken out upon remembrance in the Prothonotaries office with the returnes of them and Rules thereupon given, and filed accordingly with the *Cuſtos brevium*; and therupon if the Bayl ſhew not cauſe to the contrary, judgment by default ſhall be entred againſt them in the ſayd Prothonotaries office for the ſum in which they became Bayl as aforeſaid, whereupon the Plaintiff

tiff may take Execution out againſt them, either by *Feri facias* or *Elegit* but not by *Capias ad ſatisfaciendum.*

AND in this caſe obſerve, that the Plaintiff may likewiſe ſue and arreſt the Bail going by way of Original at the common Law, for the ſum for for which they became bayl, and arreſt their Bodies, either upon the *Capias, alias,* or *Plures,* or ſue them to the Exigent thereupon, and declare upon the ſaid Recognizance, uſing all proceedings therein as in an Action of Debt but in this the Action muſt be layd in the County of *Middleſex* only, where the Records do lie, and whence the *Venue* out of that reſpect muſt riſe.

And if the bayl cannot be arreſted in the county of *Middleſex* upon a *Capias,* &c. you may return (he cannot be found, *&c.*) and ſue forth thereupon a Writ of *Teſtatum,* and by that meanes arreſt them in any other County where they may be found, obſerving all the proceedings, as in an Action of Debt.

WEe have now ſhewed you how to proceed againſt the Bayl as well as againſt the Defendant himſelfe, we come next to ſhew you how to proſecute a Writ of Errour and reverſe judgment thereupon (which is not ſo abſolutely taken away as moſt men conceive by the late ſtatute) but that ſtill if there be ſubſtantiall matter of Errour to be allowed of the Court, it holds good after verdict, and is not at all taken away in iudgment upon *Nihil dicit, &c.*

As there are various cauſes of reverſing of an Outlawry as we formerly ſhewed, ſo ſome of them may ſerve to reverſe a Judgment, which I ſhall here particularly relate.

After

After a iudgment had and recovered by (*Non ſum informatus*,) Confeſſion or otherwiſe (if it be not by tryall of *Niſi prius*) theſe cauſes of Errour or any of them being duely found, and may ſerve to reverſe and make void the ſame.

Firſt, If there be any materiall difference or variance between the additions in the Originall, or the proceſſe of *Capias*, *Alias*, *Plures*, and Exigent, and the iudgment which is warranted by them; this is good cauſe of Frrour.

Secondly, If the Debt demanded in the proceſſe or either of them, and the Debt in the iudgment recovered, do not agree, but are different, this is good cauſe of Errour.

Thirdly, If the Writ be not ordinarily and duely returned and filed with the *Cuſtos brevium*, there is inſt cauſe of Errour.

Fourthly, If there be not warrants of Attorny duely filed and put in the Office accordingly, as the cauſe requireth, as one for the Plaintiff upon ſuing forth of the Exigent or upon the entry of the iudgment, there is good cauſe of Errour, for which you are to make ſearch with the Clark of the Warrants for the time being.

And for theſe and all other Errours, you are to ſearch and get copies of the writs from the *Cuſtos brevium*, and obſerve diligently both them and their returns, and confer them with the iudgment as it is entred upon record in the Prothonotaries Office, where you are to take your number roll out of the *Bequets* to that purpoſe, that ſo you may go readily to it in the Treaſury.

Fiſtly, If the Defendant be arreſted by a Writ of *Teſtatum* in a forraigne County, and no Writ of *Capias ad ſatisfaciendum* returned againſt the Defendant with a *Non eſt inventus*, in the ſame County, where the

the Action was layd and filed with the *Cuſtos brevium*, that is good cauſe of errour in the Execution, but not in the iudgment.

NOw being informed of the cauſes of errour, and that the Defendant be not arreſted and taken in Execution, but would avoyd the ſame, then muſt he proceed as followes.

IN the firſt place having the number Roll, he ſhall doe well to get a copy of the Judgment, with the Additions of the Party Defendant, and of the Debt and Coſts of Suite literally as it is entred upon the Record.

The Prothonotaries Office as I formerly told you, is the place where you are firſt to reſort, and there to the Docquet houſe, to finde out your number Roll in the Docquets of that Term, when the Iudgment was entred; and having found the Cauſe, take the number Roll, and then repaire to the Records in the Treaſury at *Weſtminſter*, and ſo the Roll, and take a true Copy of the Iudgment in all things, as above.

Then carry the ſame or a Copy of the Precipe, Debt and Coſts, to the Curſitor of the ſame County where the Action is laid, who thereupon will make you a Writ of Errour.

THen you muſt go with the Writ of Errour to the Clark of the Errours, for the time being, who will take out the Iudgment with the Debt and Coſts of Suite, in his Book of remembrance for Baile, and be ſure you carry with you good Sureties, ſuch as the Validity of the Cauſe doth require.

Thereupon your Sureties, together with the Writ, muſt be brought to the Lord chiefe Iuſtice of the common

common Bench for the time being, and there enter Bail in a Recognizance, together with the Defendant, in double of the Debt, that the Defendant hath good cauſe of Errour, and ſhall follow the ſame Writ with effect: And if the Defendant ſhall happen to be condemned therein, and not able to prove ſufficient Error therein, then that the Defendant ſhall pay the Condemnation therin, with further coſts of Suit, ſuch as ſhall be allowed, or they the Sureties for to do the ſame: To this the Iudge ſubſcribeth both his hand, and there upon giveth warrant to the ſaid Clark of the Errours to make *Superſedias*, one, two or more, the Defendant for his Indempnity or ſafeguard from Arreſt, ſhall require which Writ or Writs the Defendant is to allow, with the Sheriff of the ſame County or Counties, where he ſtandeth in danger or feare of Execution before he be Arreſted, or the ſaid Execution Executed, either upon Body or Goods, or elſe the ſaid *Superſedias* is of no force, nor can be allowed, whereof the Defendant is to have ſpeciall care, that he have it in an early manner.

And this may be done as well in the Vacation, as in Term time, if the Defendant be not Arreſted, or have his goods taken in Execution, by vertue of the ſaid Iudgment.

But if the Defendant be taken in Execution, before the *Superſedias* be procured, then the *Superſedias* comes too late, for the Defendant ſhal not thereupon be releaſed, but muſt continue in durance, untill ſuch time as the Iudgment ſhall be reverſed by the ſaid Writ of Errour, in the Upper Bench.

FOR Reverſall whereof, he muſt not only ſue forth his Writ of Errour as above, but alſo cauſe the whole Record of all the Proceedings, from the Original and the beginning of the ſame Cauſe (if Errour

rour be not found in the entry of the Iudgment it ſelfe) To be certified by the ſaid Clark of the Errours, out of the common Pleas into the Upper Bench, and Aſſign cauſe of Errour there.

The Record being thus certified, and Errour aſſigned upon the return of the ſaid Writ of Errour, he is to take Copyes thereof, and thereupon ſue forth a Writ of *Scire facias* to the Plaintiff, in the Action to here Errours.

To this the Plaintiff if he ſee cauſe may appeare and plead, and the moſt uſuall and common Plea there is (that the Record is in nothing Erroneous.)

The Plaintif having ſo pleaded, and willing to have the ſaid Errour argued, and the Iudgment confirmed as cauſe ſhall require.

The Defendant according to his Recognizance, muſt ſo follow the ſame with effect, or elſe he will be condemned therein.

The Defendant is then to labour for a day, given for the arguing of the ſame Errour, if the Cauſe ſhall ſo require.

But if the Defendant do delay the Plaintiff, the Plaintiff is to ſue forth two *Scire facias* againſt the Defendant, to ſhew cauſe why he ſhould not have Execution: And if at return of the ſecond *Scire facias*, Errours be not aſſigned, Iudgment is confirmed for the Plaintiff.

NOte that in this caſe upon a VVrit of Errour brought upon a Judgement had in the Court of Common Bench, and returned into the Upper Bench, the proceeding thereupon muſt be onely in the Upper Bench, to which Court and no other it doth properly belong after it is thither returned.

But

But a Writ of Error upon a Iudgement had in the Upper Bench muſt be returnable in the Exchequer Chamber; and the cauſe of Error is onely heard and determined before the Lord cheife Juſtice of the Common Bench, the Lord cheife Baron of the publique Exchequer, and the reſt of the Iudges and Barons, who are of the Ceife of thoſe two Courts, and not before the Iuſtices of the Court of Upper Bench, where the Cauſe formerly depended, and received its judgement.

If the Error be found and allowed by them, to be ſufficient and good, then the ſayd judgement is by their full conſent and judgement to be reverſed and made void.

But take notice that notwithſtanding the reverſall thereof, it takes not away the Plaintiffs cauſe of Action; for the Plaintiff may commence a new Action againſt the Defendant for the ſame Cauſe, if he ſo think fit.

If the Errour be not found good and allowed, then is the former Iudgment affirmed, and further Coſts for delay of Execution allowed to the Plaintiff, who may preſently ſue forth Execution out of the Court of Upper Bench, either againſt the Defendant or his Sureties, as he thinks beſt, and proſecute againſt them, either by *Scire facias, &c.* as in the caſe of ſpecial Bail as above, or by an Action of Debt: But if any Writ of Errour be ſued in any other Action then an Action of Debt, no Bail is required.

The Fees in this caſe are very uncertain, and cannot be expreſly ſet down, but the Heads of them, according to their proceeding, are as follow.

For ſearch of the Record to finde the Errour.

For

For the Copyes of the Record.
For the Writ of Errour.
For the Lord chiefe Justices Fee.
For putting in Bail.
For certifying the Record.
For assigning causes of Errour.
For an *Habeas Corpus*.
For the allowing.
For the return.
For the *Superſedias*.
For the Copy of the Writ of Errour.
For drawing *Diminution* if need require.
For the Copy thereof.
For entring the Errours and Plea.
For a *Certiorare* if need require.
For a Certificate from the *Cuſtos brevium*.
For entring the ſame, and *Diminution*.
For the warrant of Attorney.
For the Copyes of the Books for the Judges.
For Counſellors Fees.
For affirming the Iudgment.
For the Copy thereof.
For the *Scire facias* and entring.
For filing and returning.
For Attorneys Fees.

Cum multis aliis que nunc, &c.

NOte, that if upon any Judgment recovered and had againſt the Defendant, he be taken in Execution, or have his Goods taken, or his Land extended for the ſame, and upon full payment or ſatisfaction of the Debt and Coſts, the Plaintif either in perſon, or by his Attorney, do acknowledge ſatisfaction upon Record, in the ſaid Court wherein the Judgment was entred; and if the Defendant at no time, from thenceforth or after, make a Releaſe of Er-

rours to the Plaintiff, and that there be good cauſe of errour found in the ſaid iudgment, the Defendant may bring a Writ of Errour upon the ſaid iudgment and upon arguing thereof, (as before the Errours being allowed by the Iudges, and the iudgment thereupon reverſed) the Defendant may ſue forth a Writ of Reſtitution againſt the Plaintiff, and recover back again the full Debt and coſts of ſuit ſpecified in the ſaid iudgment; but if he have made a releaſe, he is void of remedy.

And take notice further, that if there be a Judgment had and recovered againſt the Defendant by way of *Niſi prius*, and verdict of twelve men, Then unleſſe he can finde ſome good cauſe in the Originall or the entring or giving of the ſaid Judgment after the Verdict ſo given & had, he cannot be admitted to ſue forth a writ of Errour, for by many Statutes, and particularly the Statute of *Jeofailes*, many great faults, miſpriſions, or cauſes of Errour had or committed in proſecution of the ſaid Cauſe before the ſaid Verdict, are taken away.

Obſerve further, that if the Defendant be outlawed after iudgment and there be good cauſe of errour to be found as well for or in the ſaid iudgment as Outlawry, the Defendant may bring a Writ of Errour and be bailed for both, and have a *Superſedeas* as well for the ſafeguard of his Body as Goods, before they be arreſted or taken upon the ſame.

NOw becauſe we have omitted to ſpeak of acknowledging of ſatisfaction where the Debt is ſatisfied and iudgment had, whereby the Defendant in Caſe the ſatisfaction be not acknowledged may be in danger in paying twice, one and the ſame Debt, therefore obſerve the inſuing rules.

When you are to acknowledge ſatisfaction, be ſure

to

to have a ſufficient warrant for it from your Client, and likewiſe let the Defendant ſeal a releaſe of Errours for the reaſon before alleadged.

If it be in Term time, get the Crier to bring the Roll into Court and lay it before the Secondary, with the cauſe ready before him, and pray him to enter ſatisfaction which the Secondary of that Prothonotary in whoſe office the cauſe was entred, will do you, paying the Fees as follow.

To the Crier for bringing in the Roll.	6*d*.
To the boxe if the Debt be not above forty pound	6*d*
If above forty pounds for every hundred pounds,	1*s*.
To the Prothonotary	2*s* 4*d*.
To the Secondary	4*d*
For the Attornyes Fee	3*s* 4*d*

HAving gone thus far in actions of Debt it reſts now we ſhould ſpeak ſomething of a wager at Law, which is a plea uſuall by the Defendant where an action of Debt is brought againſt him, either for mony lent, or upon a Book-debt, or upon detinue, or any other action of Debt which is not grounded upon ſpecialty (unleſſe it be where an account hath formerly been before Auditors) in all which caſes the Defendant may wage his Law, and there are two wayes of waging Law.

The firſt is called, *Lex juſtanſter*, which is when your Client will preſently upon pleading come into Court and ſwear that he oweth or detaineth nothing, in which caſe it behooves you to have your Client ready, at the time when you plead, and the next day or ſecond, bring him into Court, and let him do his Law, in which caſe the Plaintiff cannot become

non-ſuit; but upon a wager at Law at a day aſſigned he may be non-ſuited.

Note *Lex juſtantur*, cannot be after a generall imparlance, nor doth an Eſſoyn lye in that caſe.

FOR the other kinde of wager of Law, which is *Lex ad diem*, where a day is aſſigned, there is to be given fifteen dayes at the leaſt after the Law pleaded for doing thereof, that is, Fifteen dayes after the coming in of your Imparlance, at which time, if your Clyent be not ready to do his Law, he may be Eſſoyned (that is to be excuſed for that time) and have a longer day to do it, which you muſt do upon the Eſſoyn day of that return, wherein your Law ſhould have been done in Court.

Note the Plaintiffs Attorney muſt ever look on the dayes of Exceptions, in caſe there be no Eſſoyn caſt to enter a *Ne recipeatur*, but if there be an Eſſoyn caſt, then to adiourn it and to look to the continuances, as this, and the nature of the Actions, the Eſſoyns are caſt in require.

Note further, that upon an Eſſoyn caſt, if it be not adjourned by the Plaintiff, he may be non-ſuited, as is before ſhewed.

If an Eſſoyn be caſt where it will not properly lye, you may have it diſſolved, which is called quaſhing, which ſhall return the Deſendant or Tenant default.

NOte the Tenant or Deſendant may (for the moſt part be Eſſoyned upon every original Writ before appearance, with cauſe or without cauſe, wherby doth enſue great delay to the Plaintiff, and ſometime the Deſendant may be Eſſoyned after an Eſſoyn in Action reall (of which we ſhall hereafter treat more at large by it ſelfe.) The Tenant for life at the

return

return of the originall VVrit may be Eſſoyned, and then the Demandant muſt adiourn the ſame, wherein muſt be given common dayes of return, and at the day given by the Eſſoyn, the Tenant may demand the view, wherein muſt be given other dayes of return, and at the day of view, the Tenant may be Eſſoyned again, and then he may pray in ayde of him in the Reverſion, and at the return of the Summons *Ad Auxiliand.* he that is prayed in ayd, may alſo be Eſſoyned for nine Returns, at which time the firſt Tenant may be Eſſoyned again: And all theſe delayes, the Tenant may inforce the Demandant to ſuffer.

Note that in all reall Actions upon the Summons, the Tenant may be adiourned by the Demandant, unto the ninth return following, Incluſive, but of this more in its proper place.

The Fees *Incident* to the wager of Law and Eſſoyns, Exceptions and Adiournments follow in a Table amongſt other Fees.

NOte that many of theſe Actions of Debt are brought in inferiour Courts, as in the Sheriffs or Mayors Court in *London*, and in other Corporations, where they hold Plea by their Charters for very great Sums, where the Defendant for delay or otherwiſe, doth uſually bring a *Habeas Corpus* or VVrit of priviledge, which doth remove both the Body (if in Priſon) together with the Cauſe.

This *Habeas Corpus* or VVrit of priviledge, muſt be made by one of the Prothonotaries Clarks, and muſt be ſigned by one of the Judges of the Court, and after by the Prothonotary, and after ſealed and carryed under ſeale, and delivered to the Judge or Steward or other Officer in chiefe, of ſuch inferiour Court where the Cauſe is depending, whereupon allowance of it, they return it, and certifie the Cauſes,

which done, he that brings the *Habeas Corpus*, muſt put in Bail above before the Judge, moſt uſually that ſignes the VVrit, ſuch as the Judge ſhall approve of, when he ſees what the Cauſes are.

BUT if the party do not appeare at the return of the ſaid VVrit, and put in good Bail in ſome ſhort time (for they cannot put in common Bail, though the Action be never ſo ſmall) you may have a *Procedend.* to carry back the Cauſe or Cauſes to the Court below, from whence they were removed, there to be proceeded into Judgment.

The Fees of a *Habeas Corpus* are as follow.

	s	d
To the Clark for the Writ.	0	8
To the Prothonotary for ſigning it.	1	4
For the Seale.	0	7
To the Judge for his hand thereunto.	4	0
For the Attorneys Fee.	3	4
For allowing the Writ.	2	8
For the return of the firſt Cauſe.	2	6
For every other Cauſe.	1	0
For a Bill of *Miſtas cauſas* if in *London* for ſearch.	0	4
To the Serieant, if in *London*, for his Fee at leaſt.	10	0
For putting in Bail before the Judge for the firſt Cauſe.	10	8
For every other Cauſe.	3	0
To the Prothonotary for filing the Bail for the firſt Cauſe.	6	4
For every other Cauſe.	2	0
For the Attorneys Fee.	3	4

Now

Now becauſe there are many miſcarriages in theſe *Habeas Corpus*, whereby the Writs themſelves become unuſefull, in being not allowed, all which proceeds moſt uſually from the miſtake of title of the Corporation or Court to which it is directed, I have thought fit to inſert the titles of the moſt Corporations throughout *England*, as follows Alphabetically.

A.

St. Albons.

TO the Steward of our Burrough of Saint *Albans*, greeting.

Abenden.

To the Maior and Bayliffs of our Burrough of *Abenden* in the County of *Hertford*, greeting.

B.

Briſtoll.

TO the Maior, Aldermen, and Sheriffs of the Citie or Town of *Briſtol*, & to the Maior and Conſtables of the ſame Citie or Towne, and alſo to the Bayliffs and Commonalty of the ſame Citie or Towne of *Briſtoll*, and to the Bayliffs of the ſaid Maior and Commonalty of the ſame Citie or Towne in Court, and to either of them, Greeting; (Note this Citie hath divers Courts within it which cauſes the divers appellations.)

Burgavenie.

To the Steward and Bayliffs of *L. Nevill*, Lord *Abergaveny* of his Towne of *Burgavenie*, greeting.

Bridgewater.

To the Maior and Bayliffs of the Town of *Bridgewater*, greeting.

Bedford.

To the Maior and Bayliffs of the Town of *Bedford*, greeting.

Bridgenorth.

To the Maior and Burgeſſes of our Town of *Bridgnorth*, greeting.

Boſton.

To the Maior and Burgeſſes of our Burrough of *Boſton* in the County of *Lincoln*, greeting.

Barnſtable.

To the Maior, Aldermen, and Burgeſſes of our Burrough and Towne of *Barnſtable*, greeting.

Banbury.

To the Bayliff of our Court of *Banbury*, greeting.

Barwicke.

To the Maior of the Town of *Barwicke* upon *Tweed*, greeting.

Battell.

To the Steward and Bayliffs of *A. Brown*, Knight, Lord *Mountague*, of his Liberty of *Battell* in the County of *Suſſex*, greeting.

Bath.

To the Maior, Recorder, Aldermen, and Juſtices of the Citie of *Bath*, greeting.

Bodmyn.

To the Maior, Commonalty, and Clarks of our Burrough of *Bodmyn*, in the County of *Cornwall*, greeting.

Buckingham.

To the Maior, Burgeſſes, and Steward of the Burrough and Pariſh of *Buckingham*, greeting.

St. *Edmonds Bury.*

To our head Baylif of our Towne of *Bury* St. *Edmonds*

monds, and to our head Steward of our Liberty of the Burrough of St. *Edmonds*, and to every one of them, greeting.

Bewdley.

To the Baylif, Recorder, and Burgeſſes of the Burrough of *Bewdley*.

Bridewell.

To the Maior, Commonalty, and Citizens of the City of *London*, and to the Governours of the Hoſpitall of *Edward* the ſixth, late King of *England*, to wit, Chriſts *Bridewell*, and St. *Thomas* the Apoſtle, greeting.

Beverley.

To the Maior and Governours of the Towne of *Beverley*, greeting.

Biddiford.

To the Maior, Aldermen, head Burgeſſes, and to the Recorder, or his ſufficient Deputy of the Town of the Burrough of *Biddiford*, and to either of them, greeting.

Newcaſtle upon Tyne.

To the Maior, Aldermen, and Sherif of the Town of *Newcaſtle* upon *Tyne*, greeting.

C.

Cirenceſter.

TO the Maior, Aldermen, and Citizens of the City of *Ciceſter*, greeting.

Colcheſter.

To the Baylifs of the Town of *Colcheſter*, greeting.

Canterbury.

To the Maior and Baylifs of the Towne of *Canterbury*,

bury, and to either of them, greeting.

Coventry.

To the Maior and Baylifs of the Citie of *Coventry*, greeting.

Chipping-Wiccombe.

To the Maior, Steward, and Baylifs of the Burrough of *Chipping-Wiccomb*, greeting.

Carliſle.

To the Maior and Baylifs of the Citie of *Carliſle*, greeting.

Cheſtenham.

To the head Steward, Baylif of the Mannor of the Burrough or Towne of *Cheſtenham*, and to either of them, greeting.

Chepſtow.

To the Steward and Baylifs of the Towne of *Chepſtow* in the County of *Monmouth*, greeting.

Caſtle-Riſing.

To the Maior and Burgeſſes of the Towne of *Caſtle-riſing*, greeting.

Chipping-Norton.

To the Baylifs of the Burrough of *Chipping-Norton*, or otherwiſe, to the Common Clark, or Deputy there, greeting.

D.

Donnehewot.

TO the Maior, Aldermen, and Recorder of the Burrough of *Donnehewot*, otherwiſe called *Launceſton*, in the County of *Cornwall*, greeting.

Doncaſter.

To the Maior and Recorder of the Towne of *Doncaſter*,

caſter, and to both of them, greeting.

Derby.

To the Maior, Recorder, and Burgeſſes of the Towne or Burrough of *Derby*, or to either of them.

Downewicke.

To the Baylifs of the Burrough or Towne of *Downewicke* in the County of *Suffolke*, greeting.

Clifton, Dartmouth-hardneſs.

To the Maior, Baylifs, and Burgeſſes of the Burrough of *Clifton, Dartmouth-hardneſs*, greeting.

Dover.

To our Conſtable of the Caſtle of *Dover*, and one of the Keepers of our five Ports, or to him that holds the place there.

E.

Ely.

TO the Juſtice of Pleas within our Iſle of *Ely*, held and aſſigned, greeting.

Exeter.

To the Maior and Baylifs of our City of *Exeter*, and to the Baylif in Court of the ſaid Citie, and to either of them.

F.

Ferriet neer Shrewsbury.

TO the Steward and Baylifs of the Liberty of *Ferriet* behind the Towne of *Shrewsbury*, greeting.

Fleet.

To the Warden of the Priſon of the *Fleet*, or to him holding

holding the place, or to him holding the place there.

G.

Gilford.

TO the Maior of our Towne of *Gilford*, greeting.

City of Glouceſter.

To the Maior and Sherifs of our Citie of *Glouceſter*, greeting.

Graveſend and Milton.

To the Maior, Iurors, and Inhabitants of the Town and Pariſh of *Graveſend*, and *Milton* in the County of *Kent*, greeting.

H.

Citie of Hereford.

TO the Maior of our Citie of *Hereford*, greeting.

Hebſon.

To the Maior and Burgeſſes of our Burrough of *Hebſon* in the County of *Cornwall*, greeting.

Haveringe.

To the Steward of our Mannor of *Haveringe Athow-rie*, greeting.

Higham-Ferries.

To the Maior and Aldermen of our Town of *Higham-Ferries*, and to either of them, greeting.

Hertford.

To the Maior and head-Burgeſſes of our Burrough of *Hertford*, and alſo to the Steward in Court of Record there, greeting.

Huntingdon.

Huntingdon.

To the Maior and Bayliffs of the Towne of *Huntingdon.*

I.

Ipſwich.

TO the Bayliff of our Town of *Ipſwich* in the County of *Suffolke*, greeting.

Great Irnemouth.

To the Bayliffs of the Towne or Burrough, and Liberty of great *Irnemouth*, greeting.

K.

Kingſton upon Hull.

TO the Maior and Sheriff of our Town of *Kingſton* upon *Hull*, greeting.

Kingſton upon Thames.

To the Bayliffs of our Towne of *Kingſton* upon *Thames*, and Steward of the Town-Court there, and in the abſenſe of the ſaid Steward, to the Bayliffs and Recorder of the ſaid *Towne*, or to two of them, greeting.

St. Katherines next the Tower.

To the Steward of the Maſters, Brethren, and Siſters of St. *Katherines* behind our Tower of *London*, in Court there, greeting.

L.

Lincoln.

TO the Maior and Sherifs of the Citie of *Lincoln*, and to either of them, greeting.

Ludlow.

To the Baylifs of the Towne of *Ludlow*, greeting.

Litchfield,

Litchfield.

To the Bailiffs, Burgeſſes, and Cityzens, of the City of *Litchfield.*

Kings Lenne.

To the Mayor and Recorder of the Town or Burrough of *Kings Lenne* in the County of *Norfolke*, and to either of them.

Kings Lyn.

To the Mayor of our Town of *Kings Lyn*, in the County of *Dorſet.*

Leiceſter.

To the Mayor, Bailiffs, and Burgeſſes, of the Town of *Leiceſter*, greeting.

Lidford.

To the Mayor and Burgeſſes of the Burrough of *Lidford.*

M

Maidſtone.

TO the Mayor of the Town and Pariſh of *Maidſtone.*

Monmouth.

To the Mayor and Bailiffs of the Town of *Monmouth.*

Kings Molcomb.

To the Mayor and Bailiffs of the Town or Burrough of *Kings Molcomb.*

Mincholts.

To the Burgeſſes of the Burrough of *Mincholts*, in the County of *Somerſet* greeting.

Marleborough.

To the Mayor and head Burgeſſes of the Burrough.

rough of *Marleborough*, greeting.

Middleton

To the Steward of our Court of *Middleton* behinde *Sittingborne*.

N

Norwich.

TO the Mayor and Sheriffs of the City of *Norwich*, and to either of them, greeting.

Newport.

To the Mayor and Bailiffs of the Burrough or Town of *Newport*.

Northampton.

To the Mayor and Bailiffs of the Town of *Northampton*, greeting.

Nottingham.

To the Mayor and Sheriffs of the Town of *Nottingham*, greeting.

Newarke.

To the Mayor and Aldermen of the Town of *Newarke* upon *Trent*, in the County of *Nottingham*.

O

Oxford.

TO the Mayor and Bailiffs of the City of *Oxford*, greeting.

P

Plymmoth.

TO the Mayor of the Burrough of *Plymmoth*, greeting.

Plymton.

Plymton.

To the Mayor, Bailiffs, and Burgeſſes, of the Burrough of *Plymton.*

R

Reading.

TO the Mayor and Burgeſſes of our Burrough of *Reading, greeting.*

Rocheſter.

To the Mayor, Aldermen, and Cityzens of our City of *Roffen*, and to either of them, greeting.

S

Sudbury.

To the Mayor, Aldermen, Burgeſſes, and Steward, of our Town of *Sudbury*, greeting,

Stafford.

To the Bailiffs and Burgeſſes of our Town of *Stafford*, greeting.

Southampton.

To the Mayor and Bailiffs of our Town of *Southampton* in Court there, and alſo to the Keeper of our Goale within the ſame Town, or to his Deputy, or to either of them, greeting.

Saltaſh.

To the Mayor, Aldermen, and Burgeſſes, of the Burrough of *Saltaſh*, greeting.

Southwarke.

To the Steward in Court and Mayor of the Comminalty, and Cityzens of the City of *London*, and Burrough of *Southwarke* in the County of *Surrey*, or to his Deputy, greeting.

Shrewsbury

Shrewsbury.

To the Bailiffs of our Town of *Shrewsbury.*

Stratford upon Avon.

To the Bailiff of our Burrough or Town of *Stratford* upon *Avon*, and also to the head Alderman of the same *Burrough*, or Town and common Clark there.

Southmolton.

To the Mayor and head Burgesses of the Burrough of *Southmolton*, greeting.

T

Talboth.

TO the Bailiffs in Court of *Talboth* or Town of *Bishops Lenne*, greeting.

Tavestocke

To the Steward or Bailiffs in Court of the Earle of *Bedford*, his liberty of *Tavestocke*, greeting.

Totnes.

To the Mayor of the Burrough of *Totnes*, greeting.

Tower of London.

To the Constable holding the place of the Tower of *London*, and also to the Steward of our Court there, greeting.

Truroe.

To the Mayor and Burgesses of the Burrough of *Truroe*, in the County of *Cornwall.*

Trematon.

To the Steward of *Trematon* in the County of *Devon*, or to his Deputy, holding the place there, greeting.

Torrington.

To the Maior, Aldermen, Burgesses and Steward of the Burrough or Town of great *Torrington.*

V

Uske:

TO the Maior and Bailiffs of the town or Burrough of *Uske* greeting

W

Wallingford.

TO the Maior and Burgesses of the Burrough or Town of *Wallingford*, greeting.

New Windsor.

To the Maior, Aldermen, Bailiffs, and Steward of the Burrough of *New Windsor*, in the County of *Berkes*, to either of them, greeting.

Woodstock

To the Maior of the town of *New Woodstock.*

Wye

To the Steward in Court of the Mannor of *Wye* in the county of *Kent*, greeting.

Witteroll.

To the Bailiff in Court of *witteroll*, greeting.

Winchester.

To the Mayor, Bailifs, and Comminalty of our city of *Winton*, greeting.

Worcester.

To the Maior, Recorder, and Aldermen of

our

our City of *Worceſter*, greeting.

Wenlock.

To the Bailif and Steward of the town and liberty of great *Wenlock*, greeting.

Wigmore.

To the Steward and Bailifs of the town and Burrough of *Wigmore*, in the County of *Hereford* greeting.

Warwick.

To the Bailifs and Recorder of our burrough of *Warwick*, greeting.

Weſtbich.

To the Keeper of our Priſon and Caſtle of *Weſtbich* or to his Deputy there being, greeting.

Theſe are the ſeverall titles of ſeverall Corporations which happily may ſome of them alter in ſome particular, by reaſon of renewing their Charters and having larger Grants, by which they are incorporated anew, and which may alter the title, of which the Attorny muſt the beſt he may, informe himſelfe.

Some few rules have been omitted, which concern what hath been premiſed concerning actions of debt, and may be of much uſe in other actions; which take as followes, and firſt of Amerciaments and of the Eſtreating of them.

NOte that if the party be arreſted, and at the return of the Writ the Sherif return (that he hath taken the Body of the Defendant which he hath ready, *&c.*) and yet the Defendant appeares not, you may if the Sherif will be ſo content, take the bond of apperance given to the high Sherif, and have it aſſigned to you, and ſo you ſhall be inabled to ſue

the Defendant and his Sureties in the high Sheriffs name, or if you will not ſo do, or the Sherif will not let you have the bond, then you muſt give the Sherif a day by rule to bring in the Body, *&c.* in the Prothonotaries remembrance, which if he do not, he ſhall be amerced, and then you may ſue out an *Habeas Corpus*, with the Prothonotaries Clarke, and if he bring him not in upon that, you ſhall continue amercing of him, and in caſe the Sherif return that he is (*Languides in priſona*) That is to ſay, that he is ſo ſick he cannot bring him, then if it be found a delay, iſſues forth a *Duces tecum, &c.* and ſtill upon the amerciament you ſhall increaſe iſſues until you force an appearance: But you may have your *Habeas corpus* and alſo give your rules for amercing the Defendant as well in the Phillizers, as in the Prothonotaries office.

When you come to the eſtreating of your amerciaments you muſt ſee them entred with the Phillizer or Prothonotary where the rule was given, and then the clark of the warrants through whoſe office this Prothonotaries Rolles paſſe, whereby he may take notice of the Defendant his (*Miſerecordia*) or being in mercy upon Judgments, will certifie the amerciaments as he doth all other of that natute of courſe into the Exchequer; But if it be in the Phillizers office, you muſt get a certificate from the Phillizer to the Clarke of the Warrants, who will return it into the Exchequer, where the Sheriff ſhall, when he paſſeth his account, be inforced to pay it.

NOw if the Sheriff who made the Arreſt be out of his office before your makeyour preceed or have appearance, you ſhal have a writ called a *Diſtringas nuper vice comitem*. that is: to ſay, a deſtraining of the late Sheriff, which writ muſt be made

out of that office whence the laſt proceedings were had.

NOte, that every Attorny, Clarke, or Officer of the Court, may have an attachment of Priviledge, which is to be made in one of the Prothonotaries office, and muſt be made returnable ad a day certain, and is as effectuall on their behalfe as an originall, for if the Debt be fineable you ſave the fine, and although the Debt be ſmall, or that it be any other action, yet ſhall you hold him to ſpeciall bayl, and upon a *Cepi* returned, you may proceed to amerce the Sheriff as is in other Proceſſes.

NOte, that if you cannot arreſt the party upon your firſt proceſſe taken from the Phillizer you muſt be ſure to ſee them ſo carefully continued, which coſts you four pence for each tearm from the time of taking them forth, for if upon a ſecond Writ, the Defendant find your Writ diſcontinued, he may enter a diſcontinuance, and the want of any one continuance is Errour at the time of the Judgment.

NOte that when you deliver unto the Defendant his Attorny, the copy of your Declaration, you are to ſhew your Bond, Bill, Will, Letters of Adminiſtration, Indenture, or other writings under ſeal, whereby you intitle your ſelfe, and this, for that you have (*A Perfect. eic in curia.*) of theſe Writings in your Declaration, which is in ſubſtance an a knowledgment of them to be brought into Court; but if the Defendants Attorny receive the Declaration and then call not for ſight or hearing of the Bond, *&c.* and after pleades or takes an imparlance, you are

not bound afterwards to ſhew it him.

OBſerve further, that if you bring your action againſt two or more for one debt due upon one ſpecialty, when you draw your (*Precipe*) for the Curſiter take heed whether your ſpecialty be ioyntly or ſeverally; Joyntly thus, (we binde us our Heirs Executors, *&c*) or (*Obligamus nos heredes*, &c.) not having therein the word either of us, then your originall muſt be, and ſo your declaration (that they render to the Plaintiff ſo much mony, *&c.*) but if the ſpecialty be as is moſt uſuall, joyntly and ſeverally, then muſt your *Precipe* be ſeverall, and then muſt you make delivery, and enter ſo many ſeverall declarations as there are Defendants in your writ.

NOte that in actions of debt upon *Emſſet*, for wares or Merchandizes, or other things upon *Mutuatus*, for mony or other thing lent upon an *Inſimul computaſſet*, Actions of treſpaſſe, Battery, or upon the caſe, *&c.* you are not tied to lay the certain day; but you may lay it any time after the cauſe of action accrued, and before the *Teſte* of your Originall, but in an *Ejectione firme*, the date of the Demiſe muſt be your guide, from which you muſt not vary.

NOte that as I ſaid before, there are ſome Actions, reall, ſome perſonall, ſome mixt, whereof ſome are locall, as tied to be layd in the county where the cauſe of Action accrued; every perſonall action as an action of debt, treſpaſſe, covenant, Battery, *&c.* may be commenced and layd in any county whatſoever, according as the Plaintiff pleaſeth, although both the Plaintiff and Defendant

fendant do dwell out of the ſame; But every reall and mixt action is to be laid in the ſame county where the cauſe of the ſaid action ariſes as before, or where the lands and tenements do lye, *&c.*

The like courſe muſt be taken to continue an iſſue joyned and entred upon the roll from tearm to tearm, as before was ſhewed in the caſe of imparlances.

NOte that when you declare upon ſeverall ſpecialties, in the cloſe of your Declaration upon the (*Profert hic in cur.*) you muſt mention their ſeverall dates.

NOte alſo, that if ſeverall Defendants appear by one Attorny, who are bound in a bond joyntly and ſeverally, if they declare ſeverally againſt them, yet the condition muſt be recited but in one of the Declarations; but if they appear by ſeverall Attorneys, you muſt inſert the condition to all the Declarations.

AND note, that in many of the foregoing actions of Debt you ſhall do very well, it is the ſafeſt way for your Client to make actions of the caſe of them by *Indebitat. aſſumpſit*, where if you prove the mony lent, or wares delivered, *&c.* the law implies the promiſe, and in that caſe the Defendant is barred from waging his Law.

AND note further, that if you bring an action of debt againſt one within age, he may plead in bar that he is within age, but in caſe it be for neceſſaries, as Meate, Drink, Apparell, *&c.* there is no Bar to the Plaintiff.

And in caſe any one is ſued who is within age, he muſt defend himſelfe by his Guardian, and if he will

ſue, it muſt be by his Prochein Aime, or next of kindred.

NOte, that you may ſue an Heir as well as the Executor or Adminiſtrator for the debt due by the Obligor; but in caſe you cannot find any lands to diſcend unto him, he pleading *Viens per diſcent* (that is, hath nothing diſcended unto him) he ſhall not be charged.

If mony be payable upon demand, there in that caſe it muſt be demanded before you can ſue, and the Plaintiff muſt lay a demand in his declaration, and the Action accrues by vertue of that Demand.

NOte, that if a man ſhall bring an Action either upon bond, bill, or otherwiſe, upon which he formerly had iudgment, the Defendant may plead the former iudgment in bar, and it may be held good.

NOte how and to what caſes you may plead the Statute of *Limitations* which will guide you to bring your actions within the time limited, or to cauſe your to forbear bringing them at all, all Actions of Debt, Account, *Detinue*, Treſpaſſe, Replevin, and all other actions of the caſe, unleſſe for words, muſt be put in ſuit within ſix yeares after the cauſe of action; all actions of Aſſault and Battery, and Impriſonment, are to be put in ſuit within four yeares after the cauſe of action, and all actions of the caſe for ſcandulous words within two yeares after the words ſpoken, if in any of theſe caſes they be brought after the time limited as above, the Statute of 21. *Jacobi* pleaded, is a good plea in bar to any of them, no time limited for ſpecialties.

If

If a man Arreſt another or cauſe him to be Arreſted in another mans name, without the conſent of the Party, in whoſe name he is Arreſted, the Statute gives an Action of Debt to the Party ſo Arreſted.

An action of Debt lyes by the Statute of 2 *Edward* the ſixth, *Cap.* 13. For a Parſon againſt his Pariſhoners for not ſetting out of tythes, upon which Action the Parſon ſhall recover the trebble value of the tythes ſo carryed away untythed,

An Action of Debt by the Statute of 32 *Henry* the 8. Chapter the thirtyeth, lyes againſt an Attorney for not filing of Warrants of Attorney, in the Cauſes he is towards.

Where no place of payment is ſet down in a Bond, there the Obligor muſt be inforced to finde out his Obligee, to pay him the money.

We now proceed to Actions of Detinue wherein we ſhall need to ſay the leſs, for that the ſame Rules that have been given in Actions of Debt, either in relation to the proceſs or the manner of declaring, do hold in this, the one being in the *Debet* and *Detinet* and the other the *Detinet* only: And this Action properly lyes where a man delivers Goods or Chattels to another to keep, and the Party to whom they were ſo delivered, refuſes to redeliver them.

And obſerve that in this Action of Detinue, you ought to aſcertain the thing, as a Horſe, Cow, or other Cattell, or Chattels, naming them, and making them certain, for that the Plaintiff is to recover the thing detained, and therefore it muſt be ſo certain, as it may be known; for money delivered, an Action of Detinue lyes not but an Action of account, and your Originall in this Action runs thus,

THE

THE Keepers, *&c.* To the Sheriff of *H.* greeting, Command *J. G.* lately of *L.* in the County of *H.* Yeoman, that juſtly and without delay, he render *T. B.* one Cow, which he unjuſtly detains, *&c.*

If for a mans Evidences of his Land, in a Box or Bagg ſealed up, in which caſe alſo an Action of Detinue lyes, then the Writ runs thus.

THat juſtly and without delay he render him one Box, with Deeds, Writings, and other Minuments in the ſame Box contained, which he unjuſtly detaines, *&c.*

The Defendant hath not in this Action that variety of Plea as before in Debt, the moſt uſuall Plea being (that he detaines not the thing ſued for) and upon this he puts himſelfe upon the Country to be tryed, and the Plaintiff in like manner, *&c.*

Note that in this caſe, if the Plaintiff have a Verdict, his Judgment is a recovery of the thing detained, or the value thereof; in which caſe, as alſo where the Judgment is had by default for want of pleading, there is after the Judgment had, a VVrit of Inquiry awarded, to inquire of the value of the thing detained: Upon the return of which VVrit of inquiry, what value the Jury finde the thing of, and what Damages they give him for the detainder of it, is togeſther with increaſe of Coſts entred up for Judgement.

Note that a man may wage his Law in an Action of Detinue, as formerly in Debt was ſhowen, wherein the ſame courſe for the manner of the wager of Law, is to be obſerved as before.

But it is otherwiſe in caſe you declare for one Evidence in ſpeciall, delivered by the Plaintiff to the

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Defendant; in this case the Defendant shall not wage his Law.

Note that in case of Evidences detained, it is not proper for the Executor, nor hath he any Right to this Action, but the Heire who is to have the Lands.

Note that if it be of any thing delivered to be kept, whether by the immediate party that brings the Action, or his Father, Ancestor, *&c.* Properly this Action lyes if detained, but otherwise an Action of trover and conversion.

In the next place we come to Actions of Account.

THis Action lyes upon severall occasions, as against one that is Guardian in Socage, against one as Receiver of moneys, either by way of Rents or otherwise, or as Bailiff of an Office, or as Bailiff in generall: In all which cases, you must be sure to frame your Action rightly, by informing your selfe for what time he continued Bailif, receiver, *&c.* Of what his charge was, and what it amounts unto, and when he entred upon such his charge.

To begin with Guardian in Socage, your Process are by Summons, *Capias ad computand. &c.* And you declare upon the Statute of *Marlebridge*, the eighteenth Chapter, of a Plea, that whereas by the common Counsell of the Kingdome of our Lord King of *England*; It is provided for, that the Guardians of the Lands and Tenements which are held in Socage, should render their reasonable account of the Issues and Profits of the said Lands, to the Heires of the same Lands and Tenements, when they come to full Age, *&c.*

The

The intendment of Bailiff is one that hath the Administration and charge of Lands, Goods, or Chattels, to make the best benefit for the Owner; against this Person properly lyes an Action of account for the Profits which have been made or raised, during the time he hath had the care of them.

And observe this, that a Bailiff may be charged to account, and accordingly doth accoust, and upon account, nothing doth appeare to be arreare in his hands, but rather the Plaintiff indebted to him, in which case the Bailiff shall bring his Action of Debt, for the Surplusage of what he hath expendended and laid out over and above his Receits.

If I appoint a man to receive money to my use, to render me an account, I shall have my Action of account against him for the said moneys, he also having his reasonable Expences and Disbursements.

Where a man declares against one as receiver of moneys, and he must ascertain by whose hands the money was received; which lyes not against a Bailiff, and if the receite be from any hands, other then the party Plaintiff, the Defendant shall not wage his Law, but if it be alledged to be received by his own hands, and not by another mans hands, in this case the Defendant may wage his Law.

Where there be two Copartners in Merchandize, that occupy and Merchandize in Common, by the Statute, one shall have his Action of account against the other, they being both named Merchants.

Where there be two Joynt-Tenants, and the one makes the other Bailiff of his Moiety, in this case, he that makes the Bailiff may bring his Action of account.

The Executors of a Bailiff or Receiver, are not chargeable with an Account.

An Account may be brought against the Collectors

lectors, for money given to the uſe of the poor.

Note that if a man brings his Action of Account againſt one as Bailif, and the Defendant to his Action pleads, that he was never his Bailif to render an Account, *&c.* And upon that Iſſue ioyned, and upon the tryall a Verdict for the Plaintiff; in ſuch caſe the Judgment is, that the Defendant ſhall account with the Plaintiff of the time and profits aforeſaid, *&c.* And that he be in mercy, becauſe he did not ſooner account.

Upon this Verdict and Judgment, the Court aſſignes Auditors, before whom the Defendant is to account upon ſuch a day or time, as the Auditors ſhall appoint to heare the Account; and in the *Interim* the party either puts in Baile to account, or otherwiſe ſtands committed to the Fleet.

NOte that if the Defendant acknowledge the Action, and that there be Auditors aſſigned by the Court, in this caſe he ſhall not be inforced to put in Bail.

There are two Pleas moſt uſuall in theſe Actions of Account, the one is (that he was never his receiver, *&c.* (And the other (that he hath fully accounted, *&c.*)

Note that the Auditors Aſſigned by Court, have power upon his accounting, to make him allowance of what reaſonable Diſburſements and Charges he brings in, as laid out, and if after the Defendant be over and above in Arreare found by the Auditors, the Plaintif may bring his Action of Debt, to which as is before ſaid, the Defendant ſhall not wage his Law.

In an Anction of Accounta man may plead doubly, as where he ſtands charged to have received ſeverall moneys, ſeverall times from divers Perſons, there

there he may plead as to part (that he ſtood not Bailif, *&c.*) and as to the other part (that he hath fully accounted, *&c.*) Upon the joyning of which Iſſue, it being double you ſay; Therefore as to the trying as well of this Iſſue as the aforeſaid other Iſſue formerly joyned, Command is given to the Sherif, *&c.*

Note that an Action of Account lyes againſt a Church-Warden after he is out of Office, by the ſucceeding Church-Warden to be brought.

Where an Infant within the Age of fourteen years, being ſeized of Lands in Socage-Tenure, a Stranger enters into the Lands of the Infant, and takes the Profits of the ſame, though he be not the next of Kindred, nor Guardian in Socage, yet the Infant ſhall charge him as Guardian in Socage; and it is no Plea for him to deem that he is the next of Kindred, but he muſt anſwer to the taking of the profits, the Writ being that he ſhould render his reaſonable account of the Iſſues and profits, coming of the Lands and Tenements in *S.* which are held in Socage. *&c.*

Note that if it be for the profits of the Land, for the time after the Infant is come to fourteen yeares of Age, he muſt be ſued as Bailif, and not as Guardian.

Note alſo that if any man have cauſe of Action of Account, againſt any as Receiver and Bailif, and dye, his Executors ſhall have this Action.

This Action may likewiſe be brought in the County where the cauſe of Action ariſes, and it ſo brought, it may be removed into the common Bench, at the Suite of the Plaintif, by a *Pone*; without ſhewing the cauſe in the Writ, but it ſhall not be removed at the Suite of the Defendant, without ſhewing the cauſe in the Writ of *Pone*, as if the Defendant have releaſe,

and

and then it ſhall be named in the *Pone*, &c.

An Apprentice ſhall not be charged with an Action of account, but if a man have a Servant whom hee commands to receive Money, the Maſter ſhall have a Writ of account againſt him if he were his Receiver.

The Fees incident to this Action, and the proceedings thereupon, follow in a table amongſt others.

Actions upon the Caſe.

THeſe Actions are very numerous, and grounded upon ſeverall occaſions, as for ſcandalous words, for promiſes not performed, for ſpeciall Nuſances, &c. The Proceſſe upon them are, firſt an Originall, and then by way of *Capias*, if you can arreſt upon the firſt Proceſſe, if not, then you may proceed to the Outlawry, as before in Debt, onely the charge will be more in reſpect of the length of your Proceſſe, and for returne of thoſe VVrits, you muſt returne (that the Defendant hath nothing within my Bayliwick whereby he may be attached) this for the Originall: And for the *Capias* and other Proceſſe (that the Defendant is not found within my Bayliwick.)

In Actions of the Caſe for words, you muſt carefully obſerve what the nature of the words are, what they import, the manner of ſpeaking of them, and what the party Plaintiff may be any wayes damnified by the ſpeaking of them, what his credite was, and how impaired, and take the whole words as neer as you can; and before you bring your Action, let the Witneſſes ſet downe the words as they were ſpoken, and as they will be able to prove them, and the time and place when and where they were ſpoken, and before whom: This action oftentimes miſcarries, by

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reaſon the Attorneys weigh not well whether the words be actionable or not, and many times, though ſome part of the words taken by themſelves may be actionable, yet the ſubſequent words may qualifie the ſenſe of the precedent; as where a man ſayes of another, that he is a theife, and hath ſtolne ſomething of ſmall or no value: For generally where one ſtands charged by words for any theft, which is onely Criminall and not capitall, there the party Plaintiff ſhall never enter Judgement, although he brings his action.

An action of the Caſe lyes againſt the Husband and Wife for words ſpoken by the Wife, but in caſe the VVife be arreſted and not the Husband, you cannot declare.

This Action lyes in theſe ſeverall Caſes following.

WHere one becomes Surety for another at his inſtance and requeſt upon Bond, and he ſaveth him not harmeleſſe, but the Surety is inforced to pay the Money, in this caſe he may bring his Action upon the Caſe, wherein he muſt recite how ſuch a time at ſuch a place, at the inſtance and requeſt of the Defendant, he became bound to ſuch a one in ſuch a ſum, conditioned for the payment of ſuch a ſum at a day then to come, and that the Defendant in conſideration thereof, did aſſume and promiſe to ſave him harmeleſſe; that notwithſtanding the promiſe aforeſaid, he hath been ſued by the Obligee, and ſhew how and where and what he is damnified.

It lyes where a Contract is made between two by word of mouth, either for the delivery of Corne, Cattell, or any Merchandize whatſoever, and the party that promiſes ſo to deliver it makes breach.

It lyes for money borrowed, when you would make

ſure

ſure the Defendant ſhould not wage his Law.

NOte that in all Actions of the Caſe upon ſpeciall promiſes, you muſt be ſure to lay a good conſideration to ground your promiſe on, otherwiſe it is ſayd to be *Nudum partum*, as where it is for Money owing by a ſtranger, and his Friend promiſes payment upon forbearance; there you muſt lay, that whereas ſuch a one was indebted to the Plaintiff in forty pounds, and that for the more ſpeedy obtaining of the ſayd Debt, the Plaintiff intended to implead him, and that in conſideration the Plaintiff would forbeare to ſue or implead the party owing the Money for ſuch a time; the Defendant himſelfe would pay it in caſe the other did not.

It lies for mony promiſed in conſideration of marriage, wherein the Plaintiff muſt aver, that he marryed her ſuch a time.

To call a man a Baſtard if he be the Eldeſt Son, and in a capacity at the time of the words ſpoken, to inherit an Eſtate after his Father, and be diſinherited, an action lies.

To call a maid whore, or to ſay ſhe hath a baſtard, whereby ſhe looſeth her preferment in marriage, is likewiſe actionable.

To call a married wife whore would not formerly hold action at common Law, but in *London*, by cuſtome it hath, but *Quere* whether it will not now be actionable in reſpect of the Statute, that makes the crime capitall.

If a man ſpeak ſcandulous words of any, for which is action brought againſt him; if the Defendant be able to make proofe of the words ſpoken, he may plead a ſpeciall iuſtification; but if he plead ſuch plea, and make it not good, the damages will be much aggravated thereby.

If the Defendant ſpake other words then what are layed in the Declaration, he muſt plead eſpecially and traverſe the word layd in the declaration; but quere, whether both caſes by this late act he may not plead the generall iſſue, and give the ſpeciall matter in evidence.

Where the Defendant pleades the generall iſſue, which is not guilty for words ſcandalous, *&c.* there it reſts on the Plaintiffs part, to prove the words as he hath layd them.

It hath been uſuall, and yet is the courſe to arreſt upon a *Clauſum fregit*, and then upon filing a new Originall, to declare ſpecially in an Action of the caſe.

It lies for the hire of a horſe, which is returned back, and the hire unpaid.

It lies likewiſe, where a man abuſeth a Horſe by immoderate riding, or otherwiſe by miſuſing of him.

The party likewiſe that hires a Horſe, if he have given earneſt for the Horſe, and that it be promiſed him, it ſhall be delivered unto him by ſuch a time, and then he refuſes to deliver him, whereby he is diſappointed.

It lies for the Maſter againſt his Servant, for leaving off his ſervice before the time contracted for to be expired.

Likewiſe for a Servant, in caſe the Maſter within juſt cauſe ſhall turn him out of ſervice, before his time be expired.

It lies for a mutuall contract made between two, by word of mouth, and to bind the ſame, a peice of mony is given by the one to the other in earneſt; now if either will not perform what is agreed upon, the other may bring his Action of the caſe.

It lies, where a man upon ſale of ſheep, warrant them to be ſound, and they prove rotten, or otherwiſe unſound.

An

An action of the caſe lies where one ſells a Horſe, and warrants him to be ſound, and the horſe proves to be unſound at the time of the ſale.

It li s againſt a Farrier, who ſhooes a horſe and pricks him, whereby he growes lame.

It lyes where a man who is a Goaler, lets a Priſoner at large, and this as well as eſcape.

Where a man hath made a Diſtreſſe of Cattell, *&c.* and is driving of them to the Pound, and another comes and reſcues them, an Action of the Caſe lyes,

It lyes againſt any that ſhall intice his Covenant-Servant from him

If a man looſe Goods brought into a common Inne, or Hoſtrie houſe, an Action of the Caſe lyes.

If a man deliver goods to a Carryer, and agree upon the rate for carrying, and they are loſt, and miſcarryed, an Action of the Caſe lyes.

It lyes for ſtopping of a Water-courſe through his Ground, whereby the Plaintiff watred his Beaſts and did other neceſſaries, and if this be ſtopped either by Stones, Turfes, or otherwiſe the Courſe diverted, an Action of the Caſe lyes.

If a man ſtop up a VVay, whether Cart way or Foot way, and another hath right to that way, and can preſcribe to it, an Action of the Caſe lyes.

VVhere a man is to pay money, and gives a Bill of Exchange which is not excepted, but afterwards comes to be proteſted, an Action of the Caſe lyes.

VVhere a man ſels another mans Cattel or Goods, or Merchandizes, and warrants them to be his own, an Action of the Caſe lyes.

An Action of the Caſe lyes againſt a Taylor, who doth undertake to make Cloathes, and ſpoyles them, ſo that they are not uſefull for the party they are made for.

It lies againſt an Executor upon the promiſe of the Teſtator, provided there be a conſideration to ground the promiſe on.

It lies in the behalf of a Commoner againſt any that hinder him from the uſe of his Common.

Where a man hath an Office granted unto him and another either diſturbs him in the Execution of his place, or otherwiſe receives the profits due to the office, an action of the caſe lyes.

It lies againſt a cheat, for playing with falſe Dice.

Where a man diſturbes the keeping of a Court Leet an action of Caſe lies.

It lies againſt an Under-ſheriff for an ill or falſe return.

It lies againſt an under Sheriff, who makes return of Writs within any Liberty granted to another.

It lies on the behalf of a Phiſition or a Chirurgeon for Phiſick or performing a cure.

Where a man builds a houſe ſo neer his neighbours, or raiſes any ſhed or other out houſe, or layes piles of wood, or Stacks of hay or corne ſo neer his neighbours windowes, as that they ſtop up his light, an action of the caſe lies.

And for any other nuſance, whereby a man is any wayes damnified, as where a man builds a ſtable or privy houſe ſo neer his neigbbours houſe, that the ſmell thereof annoyes him.

It lies againſt an under Sheriff for taking greater fees then is allowed by the ſtatute.

It lies againſt one who ſhall break down a mans Wall or Sluce whereby his land comes to be drowned.

It lyes for ſelling corrupt Wine without warranting it to be good, for that it is prohibited by law.

It lies where a man hath pauned goods and tender

ders the mony due and demands his Goods, and it will not be accepted.

It lyes for not carefully keeping fire, whereby a mans houſe who is a neighbour comes to be burned either in part or whole.

It lies for digging of lime pits.

It lies againſt one for keeping a dog that worries ſheep.

It lies for a Solliciter for his Diſburſements and Fees.

It lies ſo many ſeverall wayes for promiſes, as that they are not to be named in particular, but are to be drawn as the caſe falls out, only obſerve ſome particulers following.

It lies where a man for mony lent upon forbearance, and promiſes to become ſecuritie.

It lies upon a promiſe to pay mony for land contracted for.

It lies againſt any one that makes an arreſt in a liberty not being bailiff.

It lies for the Lord of a Mannor in ancient demeſne againſt a Tenant that levies a fine above in the Common Pleas.

It lies in the nature of an action of conſpiracy, for one indited of Felony, and afterwards acquitted.

It lies againſt a Steward of a Court for not taking ſecurity in a Replevin.

It lies againſt the Husband and wife for meat, drink, *&c.* had by the Wife before the intermarriage.

It lies for a Keeper of a priſon for meate and Drink had by a priſoner.

It lyes againſt an Attorny or Clark of the Kings Bench for appearing or filing a bayle without Warrant.

It

It lies likewiſe againſt an Attorney that ſhall do any act in any mans name, whereby the party is prejudiced in relation to the Law, without Warrant had.

It lyes for erroneous proſecuting a Writ of Execution.

It lies alſo againſt an Officer who takes money by extortion.

It lies for a reſcue made upon a *Capias*, or other proceſſe whatſoever.

It lies againſt a Sheriff for not returning a *Venditioni exponas*.

It lies likewiſe on the behalf of an Executor againſt an under-ſherif, for returning falſly a *Devaſtavit*.

If a man ſells cloathes, and warrants them to be of ſuch a length, if they hold not out accordingly, he which buyes them, may bring his Action upon the caſe.

If one take a mans cattell, and another take them from him, an Action of the caſe lies, by way of Trover and converſion for the cattell.

An action of the caſe lies againſt Tenant at will, who commits waſt by burning houſes, or pulling them down, but not an action of waſt.

An Action of the caſe lies againſt a Bayliff for killing or ſpoiling any of his Maſters cattell.

If a man deliver to another his Sheep to dung his land, or his oxen to plow his Land, and he killeth them, an action of the caſe lies.

An action of the caſe lies againſt a Sherif, where the Plaintif hath a Charter of exception, that he ſhall not be impannelled upon any Jury, and ſhewes that to the Sherif, and yet he impannells him.

If the Sherif upon a writ of ſecond deliverance to the Plaintif of the diſtreſſe, and will not return the

Writ

Writ, ſo that the Defendant may conſtrain the Plaintif to come and declare, ſo that he may avow, the Defendant ſhall have his remedy by action of the caſe againſt the Sherif.

Actions of the Caſe lyes againſt a Sheriff, where he makes a *Precipe* to one who is no Bayliff of the Franchiſe, who returnes a Jury which is quaſhed, to the damage of the Plaintiff.

Where a Guardian pleads falſly for an Infant, or vouches one who is not ſufficient to render in value to the Infant, the Infant ſhall have an Action of the Caſe.

An Action of the Caſe lyes againſt a Chyrurgeon, who undertakes to cure a man of a wound, and neglecrs it, whereby a man grows worſe, and makes it through his negligence incurable.

Where a man promiſes in conſideration of an hundred pounds, or any other ſum in hand payd, to enfeoft another in ſuch and ſuch Land, by ſuch a day, and doth it not, he ſhall have an Action upon the Caſe.

There are many other caſes wherein Action of the Caſe lyes, which cannot be certainely recited, in reſpect of the various occaſions of them; but in theſe before recited, and all others, the proceed is one and the ſame, onely your Declarations muſt vary as your Caſe requires; after your Declaration drawne, upon appearance made, you deliver it to the Attorney for the Defendant, and moſt uſually with an Imparlance, which done you enter it accordingly of that Terme you deliver your Declaration, upon one of the *Prothonotaries* Rolls, and then Docquet it, and keep the number Roll by you, whereby you may be able to continue your Imparlance if need be.

The Terme following you give a Rule within ſome ſhort time of the beginning of the Terme, with the

Secondary of the Office for the Defendant to plead by ſuch a day, or otherwiſe the Plaintiff to have Judgement.

There is not much diverſity of pleading to this Action, eſpecially ſince the late Statute, the moſt uſuall Pleas are either Not guilty, or in caſe of promiſes, *Non aßumpſit.*

Either of theſe being pleaded, you make up a Copy of the Iſſue and deliver it to the Defendants Attorney, who is to pay for the Copy of the Iſſue, as before for the Declaration, four pence for every ſheet, and alſo to pay for entring his Plea two ſhillings, that done, if you intend to try it, you muſt give warning to the Attorney of the Defendant when you intend to try it, and in order thereunto make out your *Venire facias*, and get it returned by the Sheriff, and then ſue out your *Habeas Corpus*, and ſo proceed to the making of your Record; and in all other things, both before, at the tryall, and after, as you are directed before in the caſe of Debt.

But in caſe they plead not, but let it go by default, then upon the entring up of your Judgement you are to award a Writ of Inquiry of Damages, returnable ſome returne the Terme following, which done, you make out your Writ and procure it to be ſigned with the *Prothonotary*, and then Seale it, and be careſull to keep your number Roll likewiſe of your judgment when you have Docqueted it.

Note that you are to give notice to the Attorney of the Defendant of the time when you intend to execute your Writ of Inquire, if you practice fairly.

And having ſo done, and brought your Writ under Seale, and delivered it to the Sherif, you may proceed upon it according to the time agreed on.

The Sheriff is to ſummon an Inqueſt, who are to in-

inquire what Damages the party Plaintif hath ſuſtained, as alſo for his Coſts and Expenſes of Suite.

The Inqueſt having paſſed, if the Sherif drawes a ſhort ſchedule, and annexes it to the Writ of Inquiry, and returnes the Writ of Inquiry, which is called an Inquiſition, which he delivers you upon payment of his and the Juries Fees.

Having your Writ of Inquiry thus returned, and the Inquiſition annexed, you muſt bring it to the Prothonotaries Office and there take it out in the Bill of Pleas, together with the Return and Inquiſition, and give a Rule upon it, which done and the Rule out, you cary it to the Prothonotary, and he taxeth your Coſts, and then you pay him for it, and carry it to the Clark of the Judgments, and be ſure you give him likewiſe your number Rol, and Term when the Judgment was entred, and he will make you out, either a *Capias ad ſatisfaciendum*, or a *Fieri facias* for your Damages and Coſts. The Fees incident to this Action, you will finde follow.

Actions of Trover and Converſion.

THis Action is called alſo an Action of the caſe, and differs not at all in the Proceedings from what hath been ſaid before, in Actions of the Caſe.

It properly lyes where the Defendant hath found any of the Plaintiffs Goods, and refuſeth to deliver them upon demand, or where the Defendant comes by the Goods, by the delivery of any other then the Plaintiff, wherin he ſhall recover as much Damages as the Goods are worth.

It is not as in an Action of Detinue, that the thing it ſelfe, whether Goods or Cattell ſhall be recovered,

ed, but Damages to the value of them.

Note that a Demand is abſolutely neceſſary to this Action before it be brought.

In this Action if the Defendant plead that he is not guilty, which is the moſt generall Plea in this Action, the property of the Goods muſt be proved to have been in the Plaintiff, before ſuch time as they came to the Defendant his hands.

This Action is now very uſuall, and takes place in ſtead of Actions of Detinue, for in them the Defendant was at liberty to wage his Law, whereas this debars him.

In many Caſes a ſpeciall juſtification may be pleaded to an Action of Trover, as where a man juſtified the taking of it as a Stray, and refuſeth not to deliver it, being a Horſe, Sheep, or the like, upon payment for their Meat and keeping.

Many times in this Action, the Arreſt is made upon a *Clauſum fregit*, and then file a new Originall, and ſo declare in Trover; or in caſe you cannot arreſt, you may ſue to an Outlawry.

Where a man brings his Action of Trover and converſion againſt another, with whom he findes any of his Goods loſt or purloyned here, if the Defendant bought them in open Market or Faire, and that they be tolled in the Book, this alters the propertie of the Goods, and I can never recover them, but this muſt be ſpecially pleaded.

Otherwiſe it is where they are bought privately and not in open Market or Faire, by this there is no property altered.

It is generally held, a mans ſhop is ſaid to be open Market; but if Plate be ſtollen and ſold to any other Tradeſman, or in any other ſhop, then the Goldſmiths to whom it is proved to buy it, it hath been held the property is not altered, but that the Party looſing

looſing of it, may recover the value of it in Damages by Action of Trover.

All the proceedings in this Action are generally the ſame immediatly before going in all particulars, whether it be by tryal at the Aſſizes, or by Writ of Inquiry; which VVrit of Inquiry, Inquiſition thereupon, as that alſo in caſe are to be filed by the Clark of the Judgments, with the *Cuſtos Brevium*, after Judgment entred up.

In this Action you muſt be carefull of the dayes when you lay the Plaintiff to be poſſeſſed, and what time after you lay it to be loſt, and what time after the Converſion.

Actions of Treſpaſs and Battery.

THis Action lyes where a man aſſaults another, and ſtrikes, kick, or beat, or do him any manner of violence, either with hand, foot, or with any weapon, or throw any thing at him, or upon him, whereby he is hurt.

The writs in Battery are by way of originall *Capias, alias, &c.* If not arreſted upon the firſt Proceſſe, you may take out a *Capias* by continuance, or otherwiſe ſue to the Outlawry.

Your originall Writ runs thus: Wherefore by force and armes on him the ſaid Plaintiff at *L.* he made an aſſault, and him beat, wounded, and evill intreated, ſo that of his life he did diſpaire, and other harms to him he did, to the great Damage of the Plaintiff, and againſt the Peace, *&c.*

In ſome caſes you add (after wounded and Impriſoned) in caſe the Party were kept in Priſon, and then in the Court, you name for what time.

In caſe you have the Party Arreſted, you muſt inform

form your ſelfe of the time when the Battery was done, and what the manner of the Battery was, and with what Weapons, and whether the Party were Impriſoned, and what Damage your Clyent ſuſtained.

This done, and having an appearance (which is uſually made on the Phillizers Roll, if the Attorneys take not one anothers word in the Country, or put their hands to the Sherifs VVarrant, for to appeare according to the return of the VVrit) you draw your Declaration, which is no more but a recitall of the VVrit above, only in the ſecond place, when you count upon the VVrit, you are to inſert the time, and when you ſay by force and armes, you then add (that is to ſay, with Swords, Staves, and Knives) and if the Party were Impriſoned, you then ſhew, how long and whether he were forced to pay a fine for his redemption, your Declaration drawn muſt be delivered to the Defendants Attorney, as before, in caſe, *&c.* And you muſt enter it with an Imparlance, if you give one.

And you are to give Rules, the Imparlance out, and call for anſwer, and make up your Iſſue, or for want of pleading, enter up Judgment by default, and take your VVrit of Inquiry; in all things obſerving the Rules before given, either for tryall or proceeding with your VVrit of Inquiry.

The generall Plea to this Action is not guilty, but there are ſeverall other Pleas, in iuſtification of a mans ſelfe, as where it is done in defence of mans perſon or Goods; alſo a man may juſtifie in the defence of the perſon of his VViſe, Father, Mother, or Maſter: But note that if it be not in theſe Caſes, or in the Maintainance of Juſtice, if he be not conſtrained by a neceſſary cauſe, he is puniſhable if he beat another.

If

If a man come into another Houſe againſt his will, and there offer violence either to his VVife, Children, Servants, or to any of his Goods, he may lawfully thruſt him away, to hinder him, and if he bring an Action in ſuch like caſe, he may plead ſpecially, as the Caſe was, and conclude that to hinder him, or put him out of doors, he did (*Molliter manus imponere*, &c.) that is, ſoftly lay his hands upon hm.

To all ſuch ſpeciall Pleas, it is uſuall they ſhould be pleaded under Counſels hand.

VVhere a man for preſervation of the peace, goeth about to part a Fray, by holding either of the parties from ſtriking, in caſe the Party that was ſo holden, do bring an Action of Battery, the Defendant may plead ſpecially, that to preſerve the perſon of one from killing, and preſervation of the publick Peace he did come in ayd to him, and did ſoftly lay his hands upon him

To this the Plaintiff may reply, that he did it of his own proper injury, without any ſuch cauſe, and then the Defendant muſt maintain his Plea, with an (*ut prius dicit*) And of this he puts himſelfe upon the Country, *&c.*

There is a Plea called (*Son aſſalt demeſne*) which is where a man juſtifies in his own defence, as being firſt ſtruck, which falls out to be very frequently pleaded. Thus much for Battery.

Of Treſpaſs in generall.

THeſe are the moſt generall Actions next Actions of Debt that are brought, and vary in the originall Proceſſe and Declaration, according as the Treſpaſs

Treſpaſs is, and the cauſe of Action thereby accrued.

It may be brought for breaking the Cloſe, without adding any manner of other Treſpaſs.

Sometimes for breaking both Cloſe and Houſe, in which caſe the Originall is; VVherefore by Force and Armes, the Cloſe of the Plaintiff at *L.* he brake, and other harmes to him he did, to the great Damage of the Plaintiff, and againſt the publick Peace, *&c.*

You may lay it for ſeverall Treſpaſſes at ſeverall dayes, or one Treſpaſſe with (a *Continuando*) that is, continuing of it for ſome certain dayes or works, from the time laid in the Declaration.

It lyes for chaſing of Cattell, whereby they either dyed, or were bitten or worryed with Doggs.

It lyes for taking away of Pales, Poſts, Railes, breaking of Hedges or Fences.

It lyes for digging in a Leaden Mine, and taking away the Oare, or for breaking the Ground, and digging there.

VVhere a man breakes another mans Dove-Cote, and takes away Pigeons, an Action lyes.

For drawing a Cart and Horſes over any mans Ground, where there can be no way preſcribed for, an Action of Treſpaſſe lyes.

It lyes for fiſhing in another mans Ponds, and for breaking the Pond, and letting out the water.

For chaſing in a Free Warren, an Action lyes.

For breaking of a Cloſe, mowing of Graſſe, and eating of Corne with a mans Cattell, this Action lyes.

For Treſpaſſe done in a Garden, by plucking up

by

by the Rootes, *Roſemary*, *Lavender*, and other Herbes.

It lies in the behalf of a Miniſter againſt any that hinder or oppoſe him, in carrying away of his tithes.

It lies for impounding a Horſe or other Cattell, and not giving them ſuſtenance in the pound.

It lyes for taking away Hay in cocks, and Corne in ſheafes.

It lies for taking away of Horſes or any other like Cattell, wherein you ſay (of the price of ſuch, *&c.*) or if goods and Chattells, then you ſay to the value of ſo much.

It lies for breaking of the Doores, VVindowes, VValls, or other forces of a houſe.

An acion of treſpaſſe lies, where one having right to a Toll in a market, and implyes his Servant to gather it, and he is diſturbed in it.

It lies likewiſe where a man hath right to keep a Fayr, and is hindred.

It lies on the behalf of one that hath return of Writs within his Hundred, and hath a Diſturbance by any.

And where a man hath right to keep a Court Baron, and is any wayes diſturbed, this Action lies.

For digging in a mans Cole mynes, and carrying away Coals, and for digging in a mans quarries, he ſhall have his action.

WE E have now given you ſome particular hints, ni what caſe an action of treſpaſſe lies, I ſhall now proceed to the proceſſes thereupon, which as I told you are by Originall, in the firſt place *Capias*, in caſe you can arreſt them, or otherwiſe to the Outlawry.

If

If you arreſt the party, and have an appearance you muſt draw your declaration, wherein you muſt be ſure to take perfect notice from your Client of the day when the Treſpaſſe was done, that ſo you may lay it to be done before the *Teſte* of your Originall, and likewiſe how long the treſpaſſe continued, that ſo there be Occaſion you may lay it with a *Continuando*, and whether there were not ſeverall Treſpaſſes at ſeverall dayes, and the place where the Treſpaſſe was done, in what Town or Pariſh, for from thence your *Venue* muſt riſe.

To this Action the moſt generall Plea is not guilty, yet is there much ſpeciall pleading by way of Juſtification or otherwiſe, but moſt uſually that is after the common Barre hath been pleaded in an Action of Treſpaſſe, and that there be a new aſſignment of the place, then they plead as to the Treſpaſſe in the place of new Aſſignment, either in juſtification for a Foot way, or a Cart-way, or ſome other ſpeciall Plea, *&c.* Or not guilty to the new Aſſignment: This new Aſſignment is uſed very oft, to cleer a Title, which upon it comes in queſtion; here in caſe the Title appeare to be the Plaintiffs, he ſhall recover Damages.

This Action brings to the party Plaintiff if he recover, Damages, but not recovery of any Poſſeſſion, as in the caſe of an *Ejectione Firme.*

All manner of Proceedings after the Declaration any wayes had, relating to this Action, whether by tryall of *Niſi prius*, or Writ of Inquiry, upon default or confeſſion, are altogether the ſame with what hath been delivered, as to Actions of the Caſe.

Actions

Actions of Covenant.

THis Action lyes where an Agreement or Compact, is by Deed, Articles, or other Writing, ſealed between two perſons, where every of them is bound to the other, to perform certain Covenants for his part, and if the one of them holdeth not his Covenant but breaketh it, then he which findeth himſelfe agrieved, may have thereupon a VVrit of Covenant: And Covenants are either in Law or Fact.

A Covenant in Law is that which the Law intendeth to be done, although it be not expreſſed in words, as if a man demiſe any thing to another for a certain Tearm, the Law intendeth a Covenant of the part of the Leſſor, that the Leſſee ſhall hold all his Term againſt all lawfull Incumbrances.

Covenant in fact, is that which is expreſly agreed between the parties.

Alſo there is a Covenant meerly perſonall, and a Covenant that is reall, as ſayes *Fitzherbert* in his *Natura brevium*, Fol. 145.

Covenant reall, is where a man tyeth himſelfe to paſſe a thing reall, as Lands or Tenements, where a man Covenants to levy a fine of Lands; *&c.*

Covenant meerly perſonall is where a man covenants with another by Deed, to build a houſe or to ſerve him.

Note well that no VVrit of Covenant ſhall be maintainable without eſpecialty, but in the City of *London*, or in ſome other place priviledged by cuſtome or uſe.

Note that a man may bring an Action of Covenant upon a Letter of Attoney.

WHere a Covenant perſonall is made to any and the Covenantee dys, the Covenant being unperformed, here his Executor ſhall maintain an Action of Covenant.

The Heire ſhall likewiſe maintain an Action of Covenant, where one had covenanted by writing with his Father, to Enfeoff him in certain Lands, and doth it not.

The Proceſſes incident to this Action is an Originall which is a Summons, for in this Action as in Debt, you ſay (was ſummoned and not attached.)

Your Originall runs thus (Of a Plea that he hold the Plaintiffs Covenant between them made, according to the force, form, and effect, of certain Indentures between them made, *&c.*)

After your Originall taken out, you may have a *Capias*, and if you arreſt him not upon the *Capias* you may proceed to the Outlawry, as in other caſes

Upon appearance had, you muſt declare as in the example following, wherein you muſt obſerve, that in this action as in debt, you have (an *Alias dictus*) which muſt be made literally to agree with the Indenture.

Eſſex. ſſ.

J. *Glover*, late of, *&c.* otherwiſe called *John Glover*, Gentleman, was ſummoned to anſwer *E. M.* of a plea, that he hold to him Covenant between them made, according to the force, form, and effect, of certain Indentures between them made, *&c.* And whereupon the ſaid *E.* by *T. G.* his Attorney ſaith, That whereas by a certain Indenture made (ſuch a day, yeare, and place) between him the ſaid Plaintiff on the one part, and the ſaid I. of the other part, which other part ſigned with the Seale of the ſame

ſame *I.* the aforeſaid *E.* brings here into Court, the Date whereof is the ſame day and yeare: It is teſtified (reciting the whole Indenture, till you come to in Witneſſe whereof) as by the ſame Indenture more fully appeareth: And the ſaid Plaintiff ſaith, That although he hath fulfilled and performed, all and ſingular the Covenants and Grants in the Indenture aforeſaid above ſpecified, on his part to be fulfilled and kept, in Fact the ſame *E.* ſaith, That within the aforeſaid ſeven yeares, after the making of the Indenture aforeſaid (that is to ſay) Such a day and yeare, one *T. D. Eſq;* then being of the learned Counſell of him the ſaid *E.* at *B.* aforeſaid, in the County aforeſaid, did deviſe and cauſe to be written for further aſſurance of the aforeſaid Cloſe, with the Appurtenances to be made to the ſaid *E.* a certain Writing of releaſe of the aforeſaid Cloſe with the Appurtenances, to be made to the ſaid *E.* by the ſaid *J.* in which ſaid Writing it was contained, that the aforeſaid *J.* ſhould remiſe, releaſe, and alwayes for himſelfe and his Heires, quite claim to the ſaid *E.* and his Heires, the whole Right, Title, and Claim which he had, or at any time from thence following might have, of and in the aforeſaid Cloſe with the Appurtenances: And the ſame *E.* afterwards, the ſame day and yeare at *C.* aforeſaid, did requeſt the aforeſaid *J.* to ſeale, and as his Deed, to deliver to the ſaid *E.* the aforeſaid Writings of releaſe in form aforeſaid deviſed; and the aforeſaid I. that to do, then and there altogether refuſed, againſt the form of the Indenture aforeſaid; yet the ſaid *J.* although often required, hath not held the Covenant aforeſaid (for that, that he the ſaid *J.* and his Heires, and all perſons and their Heires, claiming in or by the aforeſaid *J.* at any time, during the ſpace of the aforeſaid ſeven yeares, upon reaſonable demand thereof,

to them or any of them to be made, shal make, permit, & acknowledg, or cause to be made, permitted, and acknowledged, al and singular act& acts, thing or things for the better and further assurance and sure making of the Premisses with the appurtenances to the said *E.* and his assignes, as by learned Councell of him the *E.* his Heires or Assignes, should be reasonably devised, but hath broken it, and to hold that covenant to him the said *E.* hitherto hath denied, and yet doth deny, whereupon he saith that he is damnified, and hath damage to the value of two hundred pounds, and thereupon he brings his Suit, *&c.*

Here you have an action of Covenant brought for making further assurance; wherein you see the laying of the breach, and what the further assurance is, and indeed the whole difficulty of an action of Covenant, lies in the laying well the breach.

To this the Defendant pleads as followes.

And the aforesaid *I.* by *F. N* his Attorny, comes and defends the force and injury when, *&c.* and saith, that the aforesaid *E.* did not require him the said *I.* to seal, and as his Deed to deliver to the aforesaid *E.* the aforesaid writing of release, for further assurance of the aforesaid close with the appurtenances, to the aforesaid *E.* to be made, as the aforesaid *E.* by his Declaration aforesaid above hath supposed, and of this he puts himself upon the country, and the aforesaid *E.* in like manner, therefore command is given to the Sheriff, that he cause to come here on the morrow after the holy Trinity, twelve, *&c.* by whom, *&c.* and who neither. *&c.* to recognize, *&c.* Because as well, *&c.*

Observe by this issue you see ioyned, that where the Defendant takes issue, you say, (and of this he puts himself upon the country) and where the plaintiff

tiff takes the iſſue, you ſay, (and this he prayes may be inquired of by the Country.)

In this action you recover damages aſſeſſed by the Jury for what you are damnified, by the breach of Covenant and coſts of ſuit.

Note that an Adminiſtrator, may have an action of Covenant, as well an Executor, and the Writ of covenant ought to be brought in the county where the Deed is made; but if it be brought in another County, then where the Deed was made, the party Defendant ſhall not have a Plea in bar to the Writ, unleſſe that the Deed bare date in another County.

A Writ of Covenant alſo lies againſt pleadges, who become ſureties that another man ſhall perform a covenant.

The aſſignee of the Leſſee ſhall maintain an action of Covenant againſt the Leſſor, although he be not ſpecified in the ſaid Deed of Covenant to be an Aſſignee.

HAving given you before, an iſſue joyned in an action of Covenant, you are (in caſe you proceed to trial) to make out your *Venire facias* as in others, with this difference, only that you ſay, (of a Plea of Covenant broken) and then your *Habeas corpus*, and the reſt of your proceedings in order to triall, as before in other actions.

But if after your imparlance and rule being out, the Defendant plead not, you muſt take your Judgment by default, which is to be ſigned by the *Prothonotary*, and then you are to have your Writs of Inquiry which be awarded upon your Judgment roll, and ſigned by the *Prothonotary*

There may be one or more breaches aſſigned, as the caſe may require.

But in an action of Debt upon Bond for performance of Covenants, he can assigne but one.

NOw because within the title of that covenant reall, fall Writs of Covenant, it will not be amisse to insert here the forme of suing out a fine.

And first, How to acknowledge a fine at the Barr in Court.

IN the first place you are to take notice, that it is in the parties Election, whether they will acknowledge a Fine in open Court or before the Lord cheif Justice of the common Pleas, at his Chamber or else where out of the Court, as before some Judge of the same Court, or before the Justices of Assize in the Country, when they go *Circuit*, or before Commissioners in the Country, by vertue of a special *Dedimus potestatem*, to give them authority to take the knowledge thereof, none of all those saving the Lord cheif Justice having power to take without *Dedimus, &c.*

If the acknowledgment be to be made in open court you must have your Writ of Covenant made by the Cursiter, and there compounded it at the office of Alienation where it must be likewise indorsed and entred, and so fitted for the Seal, to which must be annexed your *Precipe*, and concord in Parchment, which you must deliver to some one of the Serjeants at Bar to draw it for you, and then you pay him three shillings four pence, the other Fees payable in Court are certain and are not great; for by the acknowledgment in Court, the Client saves divers Fees and charges, which otherwise the Caption would cost.

The

The Caption being paſt, you proceed with your *Precipe*, and Concord, and VVrit of Covenant, through the alienation Office, Kings Silver, *Cuſtos Brevium*, and Chirographer, as hereafter is ſhewed in other acknowledgements.

How to acknowledge a fine before the Lord chiefe Juſtice.

IF you would acknowledge your Fine before the Lord cheif Juſtice of the Common pleas, out of Court, firſt draw your *Precipe* and concord in a ſheet of paper, and then bring the parties that muſt acknowledge the fine to my Lords chamber, and deliver your *Precipe* to my Lords Clarke of the Fines, who will read it to them in preſence of my Lord, and their hands being firſt ſet to it, they acknowledgeth it before my Lord, and he putteth his hand to it.

The fee of my Lord cheife Juſtice is, 9*s*- 8*d*. which being payd by you or your Client to my Lords Clarke, after the acknowledgment, the clarke will afterwards ingroſſe the *Precipe* and concord in Parchment, and get my Lords hand to that which you muſt fetch from him, & give him his fee for the ingroſſing thereof, which is. That done, you muſt carry it to the Curſitor of the ſhire where the Land lies and leave it with him to make a VVrit of covenant by, when the VVrit is made, before you paſſe it under ſeal, you carry it to the alienation office, where you are to pay a fine for licence or leave to alien, and there it is you muſt make your Compoſition, which is ſet by the Commiſſioners ſitting for that purpoſe, and that you may do it with the leſſe charge to your Client, you muſt inform your ſelfe of the value of the

land by year, and in case there have been a former fine, if you have it not to know the tearm when it was and in case you inform the value, there is one sits purposely with the Commissioners to take it, who was formerly a Doctor, you must by Entreaty, perswasion, or otherwise draw the fine to be set at as low a rate as possibly you may.

The value being set down by one of the Commissioners, if it exceed forty shillings, (for else there is nothing to be payd) you must go to the Receiver in the same office, and pay the fine so assessed, which is the Kings Silver, for the Kings license, which license the Clark of the Kings silver entereth, as is hereafter shewed, when the mony is payd, the Receiver will set his hand to the back of the Writ, then give it to the Doctor to sign, who hath four pence as I take it for his hand, then get the hands of the two Commissioners to the back of the Writ, which done, you must carry it to the Clarks there sitting to be indorsed and entred.

This being done you bring back your VVrit to the Cursitor and he will get it sealed, and then you pay him the Fee of two shillings and six pence, then having broke it open you are to returne it as follows,

Towards the upper end of the Writ thus, } *John Doo.* Pledges, of prosecuting *Richard Roo.*

Towards the middle of the Writ thus, } *John Dem.* *Richard Fem.*

And at the lower end of the VVrit the Sheriffs Name.

This

This is now by a late erected Office done by an Officer who takes for the doing of it, and making an entry of it, 1 *s.* 6 *d.*

Note, you are to file a warrant of Attorney with the Clark of the Warrants where your Writ of Covenant must be signed, which Warrant is as follows (the Shire in the Margin) *G. W. puts in his place T. L. to prosecute a Writ of Covenant against T. H. of Lands and Tenements in A. and C.*

That done, file your Writ of Covenant and your Concord which you had from Lords Clarke together, and carry them to the *Custos brevium* his Office in *Lincolns Inne*, to the Clarke who dealeth for that Shire, and leave them with him to enter in his Book and to indorse the Writ, when he hath done, fetch them from him, and pay him for the same, 3 *s.* 8 *d.*

Then take them and carry them to the Kings-silver Office to enter the Kings-silver, which is the Fine for the value which you payd to the Receiver in the Alienation Office.

The forme of his entry you may see in the Rolls of the King-silver Office, amongst the Plea Rolls of any Terme in the Treasury at *Westminster*, his Fee is for entring of it, 6 *d.* which when he hath done, you must fetch it away and deliver it to the Secondary in the Chirographers Office, who takes it forth in his Book, and hath for his Fee 5 *s.* 8 *d.* if it be in the Terme, but if it be not in the Terme, then you must give him twelve pence more, which he will have for allowing the Proclamation in the same Terme: That done, you must in the same Office deliver it to the Clark of the Office, who is appointed to write for that Shire wherein the Land lyes to ingrosse, he hath for the ingrossing of it, 2 *s.* 6 *d.* if small, but if great, 3 *s.* 6 *d.* or more in case it be exemplified.

When

When your Fines are Ingroſſed, which are by way of Indentures, get one part from him, and deliver it your Clyent to keep.

In making up your Clyents Bill, you alwaies take for your owne Fee, as allowed for your paines, ſix ſhillings eight pence.

How to acknowledge a Fine before a Judge out of Court, by Dedimus poteſtatem.

YOU ſhall proceed in taking the acknowledgement, and in paſſing the VVrit of Covenant thorow the Alienation Office, in like manner as is before ſhewed, which being done, and delivering your VVrit back to the Curſitor, you muſt beſpeake a *Dedimus poteſtatem*, which the Curſitor muſt make, and when you have your Writ of Covenant and *Dedimus poſteſtatem* under ſeale, you muſt deliver the *Dedimus* to the Judges Clark of the Fines, and he will ingroſſe the *Precipe* and *Concord*, as before is ſhewed, and return the *Dedimus*, and get the Judges hand to it; which *Dedimus* ſo returned, Concord and Writ of Covonant you muſt annex together, and paſſe them through the *Cuſtos brevium*, Clark of the Warranty, Clark of the Kings Silver, Mr. *Jones* his Office of Inrolments as its termed, and the Chirographers Office in like manner, as is before ſhewed: The courſe of Proceeding and Fees being all one, more then this, that you pay to the Curſitor for your *Dedimus poteſtatem*, 9s 2d.

How to ſue forth a Fine to be acknowledged before Commiſſioners in the Country, by eſpeciall Dedimus poteſtatem.

WHere in regard of the Cognizors debility of Body, or remoteneſs from *London* or *Weſtminſter*, or other occaſion, you are to ſue out a Fine, and paſſe it by ſpeciall *Dedimus*, inabling Commiſſioners in the Country to take the acknowledgment; you are to proceed as followes.

FIrſt draw your *Precipe* in a Sheet of Paper, as a Note for the Curſitor to draw the *Dedimus* by, then ingroſſe your *Precipe* and *Concord* in a faire peice of Parchment, and go therewith to the Curſitor of the Shire where your Land lyes, and upon your *Precipe* in paper inſert your Commiſſioners names, which muſt be foure in number, whereof one at leaſt muſt be a Knight, and get him to make your *Dedimus poteſtatem*, for which you muſt pay him and in paying of him (for he takes for them all) you pay a Fine, and for a Judges hand, and for the Maſter of the Rolls his hand, which hands muſt be had before it be ſealed, and then having it under Seale, deliver it ſo, and the Concord before any two of the Commiſſioners named in the *Dedimus*, and your Cognizors being preſent, let them take the *Caption* as is before ſhewed: Which being done, they muſt return the Writ of *Dedimus*, and their Execution thereof in manner and form following on the back of the Writ.

The Execution of this Writ appears in a certain *Schedule*

Schedule to the Writ annexed.

And they muſt write the day of the *Caption* of the Cognizance, underneath the Concord as followes: (Taken and acknowledged at *C.* in the County of *D.* the twelfth day of *Auguſt*, 1650)

Underneath the which the Commiſſioners are to Subſcribe their names.

Having your *Dedimus poteſtatem* thus returned, you muſt file your *Dedimus* and *Concord* together, and carry them to the Curſitor for the making of your Writ of Covenant, which having had and compounded, if your Proceed is as in all other Fines through the ſeverall Offices.

NOte that upon every Fine paſt, where a Fine is paid, there is within foure or five Termes a poſt Fine, that comes in charge to the Sheriff to levy in the County where the Land lyeth; and that Fine is as much and halfe as much, as was payed before in the Alienation Office.

How to ſue forth a licenſe of Alienation of Lands holden in Capite.

IF you levy a Fine of Lands holden in *Capite* of the Kings, you muſt be driven to ſue forth your licenſe of Alienation, for if you ſhould enter into the Land without a licenſe, the King would have a Writ of Intruſion againſt you, and receive all the main Profits untill you have ſued out a Pardon, which is both troubleſome and chargeable: The Fine whereof beſides the main Profits between the Intruſion and the Pardon, and the other charges, is above a years value clearly, according to ſuch compoſition

or

or *affidavit* of the under value, as is ſaid before of the other Compoſitions of the Alienation Office, unleſſe the Commiſſioners inquire, will more favourably compound for the mean Profits, as in ſome caſes upon reaſonable cauſe ſhewed they uſe to doe.

And your licenſe of Alienation is to be ſued in this manner. Firſt, You muſt get the Clark of the Alienations, to make you a *Dogget* in paper, which you muſt carry to the Alienation Office, and there compound for the value of the Land, which muſt be alſo by compoſition or *Affidavit*, as is ſhewed before.

The value being ſet down underneath your *Dogget*, you muſt pay a third part of the value ſo aſſeſſed by way of Fine for your licenſe, which you muſt likewiſe pay there in the ſame Office, and you muſt give the Receiver over and above what you pay, ſix pence.

Then you muſt there get the Doctors hand to your *Dogget*, for which you muſt give him, 2*s*. and you muſt then get the Commiſſioners in the ſame Office, to ſet their hands to the *Dogget*, then deliver it to the Regiſter, there to enter, for which you muſt give him *6d*. And after it is entred, then carry it to the Clark of the Alienation again, and he will get the Lord Chanſellor or Lord Keepers hand to it, and will afterwards ingroſſe your licenſe of Alienation, and paſſe it under the great Seale for you. The Charges are as followeth.

The Charge of acknowledging a Fine before the Lord chiefe Juſtice, and a licenſe of Alienation upon the ſame.

	l	*s*	*d*
For drawing the Concord.	0	3	4
For my Lord chiefe Juſtices Fee for acknowledgment.	0	9	8
To his Clark for ingroſſing the Concord.	0	1	6

For

For the Writ of Covenant.	0-2-8
For the return.	0-2-0
For the *Post diem* thereof.	0-0-4
For the Fine,	0-0-0
To the Receiver for marking the Writ of Covenant.	0-0-6
For the Entry and Indorsement.	0-1-8
For the Doctors hand.	0-0-4
For the Warrant of Attorney and filing it.	0-0-8
To the *Custos brevium*,	0-3-8
To the Clark of the Kings Silver.	0-1-4
To the Chirographer.	0-6-8
For ingrossing the Fine	0-3-0
For the Attorneys Fee,	0-6-8

Charges of the fine acknowledged at Barr.

	s. d.
FOR drawing the *Precipe* and Concord	3-4.
For the Writ of covenant	2-6.
For return of the same	2-0
For the filing thereof	10.
To the Serjeant at Bar	3-4.
To the Prothonotary	6.
To the Secondary	6.
To the Crier, Tipstaves, and court-keeper	1-6.
For the Fine	
To the Receiver	6.
For entry and indorsment	1-6.
For the Doctors hand	4.
For the Warrant of Attorny and filing of it	8.
To the *Custos brevium*.	3-8.
To the clarke of the Kings-silver	1-4.

To

To the Chirographer 6 - 8.
For ingroſſing the Indentures of the fine 3 - 0.
For the fee 6 - 8.

Charges of a Fine acknowledged by Dedimus poteſtatem, *before a Judge, and exemplified.*

FOR drawing the *Precipe* and concord 3 - 4.
To the Judge for his fee 9. 8.
To the clark for the return of the *Dedimus*, and ingroſſing the Concord, 2 - 6.
For the VVrit of *Dedimus poteſtatem*, 9 - 2.
For all other Fees, as in the next proceeding, for the ſeverall Offices.
For the Exemplification, 2 - 8.
For the Exemplifying, 5 - 6.
For the Seale thereof, 2 - 2.

Charges of a Fine by ſpeciall Dedimus poteſtatem *taken before Commiſſioners.*

FOR drawing the *Precipe* and Concord, 0 - 3 - 4
For the ſpeciall *Dedimus poteſtatem*, 1 - 0 - 0
For the Returne, 0 - 3 - 0
For the reſt of the Fees they differ very little from what are payd upon Fines otherwiſe acknowledged.

HAving ſpoken ſo largely of Fines, it now reſts we ſhould ſpeak ſomewhat of Recoveries, that relate

relate thereunto, for in many Caſes where a Fine is had, if there be Remainders over, it is very neceſſary for the Purchaſors ſecurity to have a Recovery, to bar thoſe in Remainder.

VVe ſhall therefore begin to ſhew you how to ſue forth a Recovery, the Tenant and Voucher coming in perſon into Court.

VVhen you would ſue forth a Recovery to be ſuffered by the parties in open Court, you muſt doe thus:

Draw your *Precipe* for your VVrit of entry, nameing the Demandants and the Tenants, the quantity of Lands, and of what nature, how many Acres, what Mannors, Meſſuages, and in what place or places they lye or extend.

Then take your *Precipe* and enter it upon the Bill of Pleas or Remembrance of the *Prothonotary*, in whoſe Office you enter and put the Voucher or Vouchers names in the Margen of the Remembrance, if it be a ſingle Voucher, then thus: The proper Tenant calls *Howſe* to warranty.

If a double Voucher, the proper Tenant calls *J. L.* Eſq; who calls *J. Howſe* (who is the common Voucher and the laſt Voucher in all Recoveries) if a trebble Voucher, then you muſt name another perſon to be Vouched over.

Upon this Remembrance you muſt enter after your *Precipe*, the Returne and *Teſte* of your VVrit of entry, and how it is returned, and the Sheriffs name, but this you make perfect before you examine your Recovery with the Prothonotary.

Thoſe remembrances are alwayes brought to the Hall in the Term time at the firſt ſitting of the court, ſo that when you would draw your Recovery at Bar, your fitteſt time will be in a morning when the Judges firſt ſit down, before they enter upon buſineſſe.

Having

Having your clients in readineſſe at the Bar, the Tenants and Vouchers, and the Remembrance in your hand, call them up between the Serjeants, and then deliver the Remembrance, and ſhew him your *Precipe* into one of the Serjeants hands, who will aske which is the Tenant, and cauſe him to ſtand up, as alſo the Vouchers, to the intent that they may be ſhewed to the court, then the Judges will aske, who knowes the parties, which you or ſome other muſt anſwer, you know them to be ſuch parties, (or elſe might others come either in men or womens names and ſuffer a Recovery of their Lands, to the Loſſe of their Lands, as hath been heretofore ſeen; where the husband brought in another woman a ſtranger, ſaying, ſhe was his wife, and ſuffered a Recovery of his wives lands to cut off her eſtate without her conſent.

After the Tenant or Tenants with the Vouchers, have their appearance recorded, then muſt you give for every Serjeant that ſpeakes, (and one there is for each perſon perſonated, whether Demandant, Tenant, or Voucher or vouchers) two ſhilling and ſix pence, which done, and the reſt of the fees payd in Court, which follow after amongſt others.

Then get the Curſitor to make your Writ of Entry by the *Precipe*, and having your writ of Entry unſealed, you muſt proceed therewith in the alienation Office and other Offices, in all things as was ſhewed in a VVrit of covenant, for the Fees and the Fine are all one, only you maſt have the Attorny Generalls hand to the Back of your VVrit of Entry which you have not to the VVrit of covenant, for which you pay ten ſhillings, formerly but eight ſhillings, and is for that you ſhould enter into that, the land is not holden in *Capite*, but when they did enter bond, they did pay but ſix pence; and alſo where

the Land is holden, and you ſue forth license of Alienation, you ſhould pay nothing.

Then take your Writ and get it ſealed, and then open it and return it, as you do your VVrit of Covenant.

Then deliver your Writ to one of the Clarks of the Prothonotaries Office, who entrethfor you, and he will enter and exemplifie your Recovery for you, and make your Writ of Seizin, and return that, and examine the Recovery with the Remembrance, Writs of Entry and Seizin, and the Roll your Recovery is entred on with the Prothonotary, who muſt ſign your Exemplification, which being carefully examined and ſigned, you muſt get ſealed, and then deliver it to your Clyent: And you muſt be very carefull to ſee both your Writ of Entry and ſeizin filed with the *Cuſtos brevium*, for that is the Warranty for your Proceedings had.

Note your Writ of Seizin may be made returnable *Indilate*, or at a day certain, or of the Term following, all which your own further experience and practiſe will ſhew.

How to ſue forth a recovery by Dedimus Poteſtatem, *and Warrant of Attorney.*

IF either the Tenant or Vouchers cannot come into the Court in perſon, you muſt paſſe it by warrant of Attorny, which warrant of Attorny may be taken by any of the Judges of either Bench, Barons of the Exchequer, or Serieants at law in their circuits without *Dedimus poteſtatem*, or by Commiſſioners in the Country,

Country, where you muſt proceed as in the Fine by *Dedimus poteſtatem.*

When you acknowledge your warrant before a Judge, you muſt draw up your warrant as before in parchment, and go with the Partyes before a Judge and acknowledge them, and he will under-write the Day of the Caption, and ſubſcribe his name, then get your Writ of entry made and paſſed through the Alienation office, which done, ſeal it, and deliver it to your Prothonotaries Clark, and he will enter it and will award the Writ of Summons, which will come in nine Returnes after the *Teſte* of the Writ of Entry incluſive, and he will make a Copy of the Declaration he entreth in parchment, which together with the Writ of Summons, and the warrant of Attorny, he will examine with the Prothonotary by the Writ of entry and the roll.

Then will he returne a VVrit of Entry, and give it you fixt together with the VVrit of Summons, warrant of Attorney, and Copy of the Declaration.

The VVrit of Entry you muſt file the VVrit of Summons you muſt Seale and keep them ſo fixt together ſafely till the Writ of Summons be returnable; at which time you muſt bring the ſame into Court, and deliver it to one of the Serjeants, who will call it at the Barr, as the manner is, and you muſt pay the Fees in Court, which done you muſt take it from the Serjeant and give it to the Prothonotary, who will marke it thus (*A Barram*) and give it you againe, which you muſt deliver to your Clarke in the Prothonotaries Office, who will Exemplifie and make your Recovery perfect and fitted for the Seale.

NOte that although the Tenant be by warrant of Attorney, if either the Recovery be a ſingle

Voucher, or the Vouchers come in perſon, it needeth no Summons, and ſo may be a perfect Recovery of one Terme.

Note alſo, where you will take your warrant by *Dedimus poteſtatem* before ſpeciall Commiſſioners, you muſt carry a Note of your *Precipe*, and of your Commiſſioners names to the Curſiter, and get him to make your *Dedimus*, and proceed in that as is ſhewed you in caſe of a Fine, as to the Caption: And when your warrants are acknowledged, get them certified, & then by the helpe of your Prothonotaries Clark, you may ſoon proceed to perfect your Recovery, either to Summons or *Alias* Summons, or ſo as your cauſe ſhall require.

It behoveth the Attorney to be very carefull of the true returning and filing of his Writs, and the examining and filing of his VVarrants, and other proceedings, for feare of committing Errour: And to that purpoſe by the Statute of 23. *Eliz.* it hath been uſed, eſpecially in weighty matters, to exemplifie the VVrits, Returnes, and VVarrants of Attorney, for feare of being imbezzeled, whereby the Recoveries might be overthrown.

If you are to ſearch for any Recovery of an old Terme, you muſt ſearch in the Office of the Clarke of the VVarrants of Attorney, where you ſhall ſooneſt finde it of any place, by reaſon all the Prothonotaries bring in their Plea Rolls, on which the Recoveries are entred to the Clark of the VVarrants to take them out into a Book.

It hath been the conſtant practice formerly, in caſe the Land were holden in *Capite*, to ſue forth a licenſe of Alienation, as you doe in the caſe of a Fine, and that before your VVrit of Entry, for elſe you may be inforced to ſue forth a pardon afterward, which was a very great miſchiefe.

Charges

Charges of a Recovery with two Vouchers in perſon at the Barr. 1653

	s - *d*
FOR drawing your *Precipe*,	2 - 6
For taking it into the Remembrance	1 - 0
For your VVrit of Entry,	2 - 6
For the Fine of it,	
To the Receiver,	0 - 6
For the Doctors hand, entring, and indorſing,	1 - 6
For drawing it at Bar, and four Serjeants,	13 - 4
To the Criers,	1 - 0
To the Box,	1 - 0
To the Warden of the Fleet,	0 - 6
For the common Vouchee,	0 - 4
For the Attorney Generalls hand to the VVrit,	10 - 6
For making the Remembrance when the Recovery is drawne at the Barr,	2 - 0
For the returne of the VVrit of Entry,	2 - 0
For the *Poſt diem* of the VVrit of Entry,	0 - 4
For returne of the VVrit of Seiſin,	2 - 0
To the Prothonotary for the Entry of the Recovery,	14 - 6
To the Clark for exemplifying of it, and making the VVrit of Seiſin	7 - 6
For ſealing the Exemplification, and VVrit of Seiſin,	2 - 9
For filing the VVrits of Entry and Seiſin,	2 - 0
For the Fee of Demandant, Tenant, and Vouchee in the Recovery,	10 - 0

Charges of a Recovery by Summons upon a Warrant of Attorney.

	s.	d.
FOR drawing your Recovery, *Precipe*, and the VVarrant of Attorney,	3	4
For entry of the Summons,	6	6
For making the VVrit of Summons, and the Seal,	2	7
To the Clark for drawing the Summons, and the entry in Parchment,	2	6
For filing every VVarrant of Attorney,	0	8
For returne of the VVrit of Summons,	2	0
For the filing of it,	1	0

Note that every single Voucher hath three Serjeants, a double Voucher foure Serjeants, and a trebble Voucher hath five Serieants, and so further.

The *Prothonotary* hath as you see before for his entry for every Summons,	6	6
For every single Voucher,	10	6
For every double Voucher,	14	6
For a trebble Voucher,	18	6
For every *Dedimus* and *Mittimus*,	4	0

The Charge of a Recovery under the Great Seale of England.

	l.	s.	d.
FOR the *Certiorare*,	0	13	4
For the allowance thereof,	1	09	6

To

To the Clarke for his paines, 0-06-8
For the Exemplication for every Skyn, 1-06-8
For the Seale, 1-00-6

Come we now to the Action called Ejectione Firme.

THis Action is the moſt generall Action now in uſe, for tryall of a Title, and comes in place of many reall Actions, which were both very tedious, difficult, and chargeable. This lyes, where a man makes a Leaſe to another of Lands, Houſes, *&c.* And ſeales and delivers it upon the Premiſſes, and leaves the Leſſee in Poſſeſſion, and afterwards the Leſſee is outed by the Entry of a Stranger; here in this caſe the Leſſee ſhall bring his *Ejectione Firme.*

And in bringing this Action, he muſt have recourſe to his Leaſe, both for the thing demiſed, and the Term, and the date of the Demiſe, and the place preciſely where the Land lyes, but thoſe only are to be mentioned in the Court, but not in the Writ.

You muſt be ſure your Originall beare Teſte, after the entry of the Ejector, and after.

In this Action is recovered the Poſſeſſion of the Land or Houſe demiſed, and that by an Execution of *Habere facias Poßeſſionem*, which is awarded upon the Judgment Roll, and alſo Damages.

The Proceſſe in it are Originall *Capias alias*, *&c.*

The Originall runs thus.

THE Keepers of the Liberty, *&c.* Greeting, *&c.* Wherefore by Force and Armes two Meſſuages,

one Garden, eight Acres of Land, two Acres of Meadow, and three Acres of Paſture, with the Appurtenances in *H.* which *R. C.* to the aforeſaid *T. P.* did demiſe for a Tearm which is not yet paſt, did enter and him the ſaid *T. P.* from his Farm aforeſaid he did eject, and other harmes to him he did, to the great Damage of him the ſaid *T. P.* and againſt the publick peace, *&c.*

This is the form of your Originall, and muſt be made thus by the Curſitor of the Shire, where the Land lyeth,

Note that although in your Leaſe you many times name ſeverall Cloſes, either of Land, Meadow or Paſture, by their particular names, yet in your Writ you muſt name the quantity of Acres of each, and how many Houſes, Cottages, Mills, *&c.*

After your Originall is ſued out, and a *Nichil* returned thereupon, you proceed to take out a *Capias*, and ſo arreſt the Ejector, but if you cannot arreſt upon the *Capias*, you may as in other Actions proceed to the Outlawry.

But the Party againſt whom you bring your Action, either appearing after Arreſt, or voluntarily you muſt prepare your Declaration.

The Declaration goeth thus.

Bedford. ß.

R. G. lately of *H.* in the County aforeſaid Yeoman, was attached to anſwer *T. P.* of Plea, wherefore by Force and Armes, two Meſſuages, one Garden, eight Acres of Land, two Acres of Meadow, and three Acres of Paſture, with the Appurtenances in *H.* which *R. C.* to the aforeſaid *T. P.* did demiſe for a Tearm which is not yet paſt, did enter, and him the ſaid *T. P.* from his Farm aforeſaid he did eject, and other harmes to him he did, to the great Damage of him the ſaid *T. P.* and againſt the publick peace, *&c.*

&c. And whereupon the ſaid *T. P.* by *F. N.* his Attorney complaines, that whereas the aforeſaid *R. C.* (ſuch a day, and yeare, and place, naming the date of the Demiſe) did demiſe to him the ſaid *T. P.* the Tenements aforeſaid with the Appurtenances, to have and to occupy to him and his Aſſignes, from (ſuch a day then laſt paſt) unto the end and Tearm of three years then next following, and fully to be compleat and ended; By vertue of which Demiſe, the aforeſaid *T. P.* into the Tenements aforeſaid with the Appurtenances did enter, and was thereof poſſeſſed, and the ſaid *T. P.* ſo being thereof poſſeſſed, the aforeſaid *R. G.* afterwards, to witt (ſuch a day and yeare aforeſaid) by Force and Armes, *&c.* Into the Tenements aforeſaid with the Appurtenances, which the aforeſaid R. *C.* to him the ſaid *T. P.* in form aforeſaid did demiſe, for the Tearm aforeſaid which is not yet paſt, did enter, and him from his Farm aforeſaid did eiect, and other harmes, *&c.* to the great Damage, *&c.* and againſt the publick Peace, *&c.* Whereupon he ſaith, that he is damnified and hath Damage to the value of forty Pounds, and thereupon he brings his Suit, *&c.*

To this the moſt generall plea is not guilty, nor is there indeed any other plea in uſe, ſometimes the Defendant confeſſeth the action, and here you ſee following a Plea if not guilty and a confeſſion both to one action.

And the aforeſaid *R.* by *T. L.* his Attorny, comes and defends the force and injury when, *&c.* And as to the whole Treſpaſſe and Ejectment aforeſaid, above ſuppoſed to be done, beſides the Treſpaſſe and Ejectment in three acres of Land of the Tenements aforeſaid with the appurtenances, he the ſayd *R.* ſayes, that he is no wiſe thereof guilty as the aforeſaid *T. P.* above againſt him declareth, and of this he puts himſelfe

ſelf upon the Country, and the aforeſaid *T. P.* in like manner, and as to the treſpaſs and Eiectment aforeſaid in the aforeſaid 3. acres of land of the tenements aforeſaid with the appurtenances, above ſuppoſed to be made, he the ſaid attorny of the aforeſaid *R.* ſayes, that he is not informed by the aforeſaid *R. G.* his Client, of any anſwer for him the ſaid *R. G.* to the aforeſaid *T. P.* in the complaint aforeſaid to be given, and nothing other he thereupon ſayes, by which the ſaid *T. P.* ſhould remaine againſt him the ſaid *G.* for which he the ſaid *T. P.* his aforeſaid Tearm of, and in the aforeſaid three acres of Land with the appurtenances, and his damages by reaſon of the Treſpaſſe and Ejectment aforeſaid, in the ſame three acres of Land ought not to recover, but becauſe it is convenient and neceſſary, that there be one only taxe of the Damages for the whole treſpaſſe and Eiectment aforeſaid, if it ſhall happen that upon the determining of the Iſſue aforeſaid, judgment ſhall be rendred for the aforeſaid *T. P.* Therefore the writ for giving of poſſeſſion in that behalf is to ceaſe, and alſo of inquiring of damages by reaſon of the Treſpaſſe and Ejectment aforeſaid, in the ſame three acres of Land with the appurtenances, untill the Iſſue above joyned be determined, and as to the trying of that iſſue, command is given to the Sheriff, that he cauſe to come here twelve, *&c.* By whom, *&c.* and who neither, *&c.* to recognize, *&c.* Becauſe as well, *&c.*

Here you have an iſſue ioyned, which if you intend to try, you muſt proceed as is directed you in other actions, and ſo conſequently for your iudgment after verdict.

In this action as I told you, there is a poſſeſſion recovered as well as Damages, and for Execution in both which is for poſſeſſion, your *Habere facias poſſeſſionem*, which is made; you moſt uſually by the Clark of

of the Judgments after your Coſts are taxed, and the Judgment ſigned, and likewiſe a *Capias ad ſatisfaciendum* againſt the Body for the Damages, or a *Fiere facias* againſt the goods or lands, which are alſo made by the Clark of the Judgments, and may likewiſe be made by any of the Prothonotaries Clarkes.

Having your writ of *Habere facias poſſeſſionem*, in caſe you cannot voluntary have quiet and peaceable poſſeſſion, you muſt deliver your Writ to the Under-ſherif, who will put you into poſſeſſion, and remove whomſoever are in.

The fees incident to this action follow in a Table amongſt others.

REplevin and avowry comes in the next place to be handled as that which brings a title many times in queſtion by reaſon of the avowry. Wherein we ſhall ſhew you the nature of the Action, and in what caſes it lies, and for what things, what is incident to it by way of proceeding.

And to give ou the fuller knowledge of this Action, we will begin to treat breifly of Diſtreſſes in generall.

Diſtreſſe is a thing which is diſtrained in a houſe or upon any Land for Rent behinde, or other duty or ſervices, or for hurt done, although the property of the thing belongeth unto a Stranger: But if they be Cattell that belong to a Stranger, it is requiſite that they were levant and chouchant upon the ſame Ground; that is to ſay, That the Beaſts have been upon the Ground a certain ſpace, and have well reſted themſelves there, or elſe they are not diſtrainable for Rent or Service.

And if a man diſtrain for Rent Services, or other thing, without a lawfull cauſe; then the party grieved ſhall have a Replevin, and upon ſecurity found,

to

to purſue his Action, ſhall have the Diſtreſſe delivered to him again: But there be divers things that be not diſtrainable, *Viz.* another mans Garment in the houſe of a Taylor, a Stranges Cloath in the houſe of a Fuller, Shearman, or Weaver, for that they be common Artificers, and that the common preſumption is, that ſuch things belong not to the Artificers in their own right, but to other perſons which put them there to be wrought: The Leſſor cannot diſtrain fats fixt by his Leſſee for a dying Pan, although the Leſſee may remove them during his Tearm.

The Leſſor cannot diſtrain Glaſſe fixt by the Leſſee for his Rent.

The Lord cannot diſtrain Shocks of Corn for his Rent, but doing Damage he may, Sheaves of Corn in a Cart may be diſtrained, Victuall is not diſtrainable.

A Diſtreſſe ought alwayes to be made of ſuch things, whereof the Sheriff may make Replevin, and deliver again in as good caſe, as they were at the time of the taking.

A man may diſtrain for Homage of his Tenant, for Fealty and Eſcuage and other Services.

He may diſtrain alſo for Fines and Amerciaments, which be aſſeſſed in a Court-Leet, but not in a Court-Baron.

He may likewiſe diſtrain for Damage-Feſant; that is to ſay, When he findeth the Beaſts or Goods of any other, doing him wrong, by eating his Graſſe or Corn, or trampling them down, or for incumbring his Ground.

Note a man may not diſtrain for any Rent or thing due for any Land, but upon the ſame Land that is charged therewith.

But in caſe when a man comes to diſtrain, the other ſeeing

ſeeing his purpoſe, chaſeth his Beaſts or Cattel away, or beareth his Goods out, to the intent they ſhall not be taken for a Diſtreſſe upon the Ground; in ſuch caſe I may well purſue, and if I take it preſently in the high-way or in another mans Ground, the taking is lawfull as well there as upon the Land charged, to whomſoever the property of the Goods be.

And for Fines and Amerciaments, which be aſſeſſed in a Leet, one may alwayes take the Goods of him that is ſo amerced, within whoſe Ground ſoever they be within the Jurisdiction of the Court.

Where one is amerced in a Leet, and another takes Leather from him, and makes thereof Bootes & ſhooes, wherby there ſeemes to be an altering of the property, in this Caſe, thoſe Bootes or ſhoos being within the Precinct of the Leet may be deſtrained for the amerciament.

Note, when one hath taken a Diſtreſſe, it behooveth to bring it to the common pound, or elſe he may keep it in an open place, provided that he give notice to the party, who was owner of it, of his ſo taking of it, and the place where it is, that he, if the Diſtreſſe be a quick beaſt, may give it food, and then if the beaſt or beaſts dye for default of food, he that was diſtrained, will receive the loſſe, for the party diſtraining, may take another diſtreſſe for the ſame rent or duty.

But if he carry the diſtreſſe to a Hold, or out of the County, ſo that the Sheriff may not make deliverance upon the Replevin, then the party upon the Sherifs returne of the Replevin may have a VVrit of *Withernam* directed to the Sheriff, that he take as many of his Beaſts, or as much goods of the other in his keeping till he hath made deliverance of the firſt diſtreſſe: And alſo if the Beaſts or Goods be conveyed to a Fort or Caſtle, the Sheriff may take

with

with him the *Posse Commitatus*, that is, the power of the County, and beat downe the Castle, as appeares by the Statute of *Westminster* the first, Chapter the seventeenth.

There is Distresse finite and infinite.

Distresse finite, is limited by Law, how often it shall be made to bring the party to a tryall of the Action, as once or twice.

Distresse Infinite, is within limitation untill the party come, as against a Jury that refuseth to appeare upon Certificate of Assize, the Processe are a *Venire facias*, *Habeas corpora*, and Distresse infinite.

It is divided also into Grand Distresse, and an ordinary Distresse.

A Grand Distresse is that which is made of all the Goods and Chattells which the party hath within the County, and seemeth sometimes to be all one with Distresse infinite.

If a man proffer sufficient amends before the Distresse made, for the wrong done by a mans Cattell, or otherwise, he cannot Distraine and Avow.

Note that it is not lawfull for any common person to make Distresses out of their Fee, nor in the Kings high way, nor in the common Street; but the King might, and so might any who are substituted as his Ministers, and have especiall Authority derived from him.

Thus much for Distresses in genreall, we come now to the Replevying of the Distresse taken.

THis Replevin (as we touched before in Distress) is a Writ that lyeth where any man distraineth another for Rent or other thing, then the party distrained

ſtrained ſhall have this VVrit to the Sheriff to deliver to him the Diſtreſſe, and ſhall finde Surety (as we ſayd before) to purſue his Action, and if he purſue it not, or if it be found or adiudged againſt him, then he that took the Diſtreſſe ſhall have againe the diſtreſſe, and that is called the returne of the Beaſts, or other things, and he ſhall have in ſuch Caſes, a VVrit that is called a *Returno Habendo*.

Alſo if it be in ary Franchiſe or Bailiwick, the party ſhall have a Replevin of the Sherif, directed to the Bailiff of the ſame franchiſe, for to deliver them againe, and he ſhall find ſurety to purſue his action at the next County Court, and this Replevin may be removed out of the country unto the common Pleas, by a writ of *Recordare*.

Note, that a man may have a writ of *Homine replegeando*, which lies, where a man is in priſon, and not by the eſpeciall commandement of the King, nor of his Juſtices, nor for the Death of a man, nor for the Kings Forreſt, nor for ſuch cauſe that is not repleviable, then he ſhall have this writ directed to the Sheriff, that he cauſe him to be replevied.

This writ is a Iuſtices and not returnable, and if the Sherif do it not, then there ſhall go forth another Writ (*Sicut alias*) and afterwards another Writ, (*Sicut plures vel cauſam nobis ſignifices*) which ſhall be returnable, and if the Sheriff yet make no Replevin, then there ſhall go forth an Attachment againſt the Sheriff, directed to the Coroners to attach the Sheriff, and to bring him before the Juſtices at a certain day, and furthermore that they make execution of the firſt Writ.

If a man take living Cattell, and more then one Beaſt, then the VVrit of Replevin runs thus.

The

The Writ of Replevin.

THe Keepers, *&c.* VVe command thee that iustly and without delay, thou cauſeſt to be replevied, unto *B.* his Cattell, which *C.* took and uniuſtly detaines, as its ſaid, and afterwards to him then thereupon, iuſtly cauſe to be brought back, leaſt that we any more hereupon, heare a complaint for want of Juſtice, *&c.*

If it be but one ſingle Beaſt that is taken, then the Writ ſhall be.

The Keepers, *&c.* We command thee, *&c.* that thou cauſeſt to be replevied unto *B.* his Horſe, Heyfer, or Bull, *&c.*

If it be of any dead Chattell, the Writ ſhall go thus.

The Keepers, *&c.* We command thee, *&c.* that thou cauſeſt to be replevied unto *B.* his Goods and Chattels.

In his Declaration it behoveth him, to declare of divers things, naming them.

But if he take but one thing that is a dead Chattell, then the Writ ſhall be thus.

The Keepers, *&c.* We command thee, *&c.* that thou cauſeſt to be replevied unto *B.* a certain Net or a certain Iron of his Mill, *&c.*

NOte that if the Sheriff return upon the Replevin, the *Alias or Plures* (where the Replevy is to be made within a Liberty or Franchiſe) that he hath commanded the Bailiff of the Franchiſe, who hath given him no anſwer, or that the Bailiff will not make deliverance, that then the Plaintiff ſhall have a *Non omittas* directed to the Sheriff, commanding him to enter into the Franchiſe, and make the Return, and if the Sheriff do it not, the Plaintiff

ſhall

ſhall have an *Alias non omittas* directed unto the Sheriff, and afterwards a *Plures non omittas*, &c.

But this return, that he hath commanded the Bailiff of the liberty, *&c.* who gave me no anſwer, *&c.* or the other return, that the Bailiff will make no deliverance, are no good returns, for by the ſtatute of *Weſtminſter*, 1. *Chapter the* 27. in the end of the ſame ſtatute appears that the Sherif upon ſuch a return made to him by the Bailiff ought preſently to entet into the franchiſe or liberty, and make deliverance of the thing taken.

And if the Sheriff upon the *Plures*, return, that the aforeſaid *B.* the cattell of the aforeſaid *A.* hath taken and them hath driven out of the County into the County of *F.* by which he cannot replevy them unto him, or if the Sherif return that he hath commanded the Bailiff of the Franchiſe of *D.* who hath returne of Writs, *&c.* who hath anſwered him, that the Cattell are Eſloyned into divers liberties, that he cannot have the view of them, whereby to make deliverance.

And if the Sheriff himſelf make return, thathe cannot have view of the catel wherby to make deliverance or if the Sherif return, that after the taking of them, *&c.* the Defendant hath eſloyned his Beaſts out of his Bailiwick, by which he cannot make deliverance, or if the Sherif return, that the Defendant hath eſloyned his beaſts into places unknown, by which he cannot come to have a view of the Beaſts, whereby to make deliverance, or if the Sherif return that he hath commanded the Bailiff of the Franchiſe, *&c.* Who hath anſwered him, that the Defendant hath impounded the beaſts within the Rectory of the Church of *C.* by which he cannot make deliverance upon thoſe returnes made by the Sherif, the Plaintiff may have a Writ of *Withernam* to take as many of the

beasts of the Defendant, and it shall be directed to the Sherif, and the Writ shall be thus.

The Writ of VVithernam.

THE Keepers, *&c.* Whereas we have many times commanded thee iustly, *&c.* To *A.* his cattell which *B.* took, *&c.* and detaineth, as its sayd, Thou shouldst replevy or signify the cause to us, wherefore our commandement to thee many times thereupon directed, thou couldest not, nor wouldest not execute: And thou hast signified unto us, that after the aforesaid *B.* took the Cattell of the aforesaid *A.* he drove them in your County, and from that County into the county of *C.* by which you could not replevy them to him the said *A.* we willing to stop the malice of him the said *B.* in that behalf, command thee, that the Cattell of the aforesaid *B.* within thy Bayliwick, thou take without delay in *Withernam*, and them thou detain untill, according to the custom of our Realm of *England*, thou canst replevy the aforesaid *A.* his Cattell, according to the Tenor of our aforesaid Command to thee formerly directed, *&c.*

Note in this Writ of *Withernam*, that whatsoever the Sheriff return upon the *Plures*, it ought to be inserted and rehearsed in the Writ of *Withernam*, as is before specified, and if the Sherif return upon the *Plures*, that he hath commanded the Bailif of the Franchise, *&c.* who answereth him, that the Cattell are essoyned, *&c.* then the Plaintiff shall have a Writ of *withernam*, directed to the Sherif, and the Sherif shall command the Bailiff of the Franchise to serve the *withernam*, and if the Bailif do not Execution, or give not any answer to the Sherif of the precept directed to him, then the Plaintiff shall have a *Withernam* directed to the Sherif, with a (*Non omittas propter aliquem libertatem*, &c. *Qui eam ingrediatis*, &c.)

&c.) and ſhall take in *withernam*, &c.

Note that the Sherif upon complaint made unto unto him of the taking of Cattell, may command his Bailif by word of mouth to make Replevin and this as well as if the Sherif had made a precept to his Bailiffe to make a Replevin, for it may ſo fall out the Sherif nor his Bailif maynot be able to write, or may want pen, inke, or paper.

If a man take Cattell damage feaſant, that is, doing hurt, and offer ſufficient amends before the Cattell be inpounded, and the party refuſeth it, &c. Now if he ſue a replevin for the Cattell, he ſhal recover damages only for the detaining of them; but not for the taking of them, for that was warrantable.

And if the Lord take the Beaſts of his Tenant wrongfully, and after the beaſts return unto the Tenant, yet the Tenant ſhall have a Replevin againſt the Lord for thoſe beaſts, and ſhall recover his damages for the wrongfull taking of them.

And if a man diſtrain in one county, and drive the cattel into another County, the party whoſe Cattell they were may ſue a Replevin in either of the Counties, which he pleaſe, or in both.

And if the Cattell of a feme ſole, that is, a woman unmarried, be taken, and afterwards ſhee take a Husband, the Husband ſolely may ſue a Replevin.

Note in Replevin, if the Plaintiff declare that the Defendant now hath and detaineth the Cattell, &c. and the Defendant appeares, and after makes default, the Plaintiff ſhall have iudgment to recover all in damags, as well the value of the Cattell, as damage for the taking of them, and his coſts.

IN this action of Replevin the proceſſe are Summons, Attachment, and Diſtreſſe, and upon a Mi-

chil, proceſſe of Outlawry, and then the Originall muſt come forth of the Chancery, except the Sherif who may make a Replevin, *Ex officio*, (which ſhall be tried in the Sherits court, called the county court) do make it, which is moſt uſuall, and then it may be removed forth of the Sheriis court by a (*Recordare*) or forth of any Lords Court or Hundred Court, by an (*Accedas ad curiam*) upon either of which writs returnable, either into the upper Bench or common Bench if the Plaintif declare not againſt the avowant for taking his Goods or Chattells which were taken before, the Avowant is to ſue out a writ of *Returno Habendo*, to be made by the Phillizer of the County, upon the Return of which VVrit, if the Plain if, that is, he whoſe Cattell were taken declare not, there ſhall be a VVrit to inquire of Damages, &c.

And if the Sheriff upon the *Returno Habendo*, do return that the Cattell were Eſloyned, *&c.* then a *Capias* in *Withernam* as was before ſaid, ſhall be awarded to take other Cattell; and if the Sheriff return that he hath no Cattell, then a *Capias* againſt the Body, and thoſe Proceſſe are likewiſe made by the Phillizer of the County, *&c.* And the like Proceſſe may be had in a Court Baron, in Replevin there.

Having ſhewed you the nature of this Action, and how and in what caſes it lyes, and the Proceſſes that are incident to it: We come now to the Declaration upon it.

Devon ß.

I. *N.* was ſummoned to anſwer *W. D.* of a Plea, wherefore he took the Cattell of him the ſaid *W.* and them unjuſtly detained againſt Sureties and Pledges, *&c.* And whereupon the ſame *W.* by *J. D.* his Attorney complaines, that the aforeſaid *I. N.*

(ſuch

(ſuch a day and yeare) at *R.* in a certain place there called *E.* he took the Cattell, that is to ſay, five Heyfers and two Bullocks of him the ſaid *W.* and them unjuſtly detained, againſt Sureties and Pledges, untill, *&c.* Whereupon he ſaith, that he is damnified and hath Damage to the value of twenty Pounds, and thereupon he brings his Suit, *&c.*

The Avowry or damage-feſant.

AND the aforeſaid *I.* by *R. F.* his Attorney, comes and defends the Force & Injury when, *&c.* And as the Bailiff of *I. E.* well acknowledgeth the taking of the ſaid Cattell, in the aforeſaid place in which, *&c.* and iuſtly, *&c.* becauſe he ſaith, that the ſame place in which the taking of the Cattell aforeſaid was ſuppoſed tobe done, containeth, and the aforeſaid time of the taking aforeſaid above ſuppoſed to be done, did contain in it ſixteen Acres of Land with the Appurtenances, in *R.* aforeſaid; which ſaid ſixteen acres of Land with the Appurtenances are, and the aforeſaid time of taking aforeſaid above ſuppoſed to be done, were the ſole and free Tenement of the ſaid *I. E.* And becauſe the Cattell aforeſaid, the aforeſaid time wherein, *&c.* were in the aforeſaid place in which, *&c.* feeding upon the Graſſe growing therein, and doing Damage there, the ſame *I.* as the Bailiff of the aforeſaid *I. E.* well acknowledgeth the taking of the aforeſaid Cattell, in the aforeſaid place in which, *&c.* and iuſtly, *&c.* doing there Damage, *&c.*

A Plea in Barre to the Avowry, by a Guardian in Socage.

AND the aforesaid *W.* saith, that the aforesaid *I.* for the reason before alledged, ought not to acknowledge the taking of the aforesaid Cattell, in the aforesaid place in which, *&c.* as the Bailiff of the aforesaid *I. E.* to be iust, because he saith, That before the aforesaid time of the taking aforesaid, and long before the aforesaid *I. E.* had any thing in the aforesaid sixteen acres of Land with the Appurtenances, one *R. E.* was seized of the Mannor of *H.* with the Appurtenances, in the County aforesaid, whereof the aforesaid Place in which, &c. is, and the aforesaid time of taking aforesaid, was parcell in his Demesne as of Fee, and being so thereof seized, the Mannor with the Appurtenances whereof, &c. he held of one *R. W.* Knight, as of his Mannor of *L.* in the County aforesaid, in Socage, that is to say, by Fealty and the Rent of twenty pence by yeare, every yeare, at the Feast of Saint *Michael* the Arch-Angell yearely to be paid, as also by the Service of doing Suite to the Court of the said *R.* of his aforesaid Mannor of *L.* from three weeks to three weekes, at the aforesaid Mannor yearely to be held; and the same *R. E.* of the Mannor of *H.* aforesaid, with the Appurtenances whereof, *&c.* being so seized, dyed thereof seized, after whose Death the said Mannor with the Appurtenances whereof, *&c.* discended to the aforesaid *I. E.* as to the Daughter and Heire of him the said *R. E.* the same *J. E.* being then within the age of fourteen yeares, that is to say, at the age of twelve yeares, and the said *W.* is the next of kindred to the said *I. E.* that is to say, the Brother of *Elianor*, the Wife of the aforesaid *R. E.* and Mother

of

of the aforeſaid *J. E.* to whom the aforeſaid Manner of *H.* with the Appurtenances whereof, *&c.* cannot from the aforeſaid *I. E.* by hereditary Right diſcend, by which the Cuſtody of the aforeſaid Manner of *H.* with the Appurtenances whereof, *&c.* and of the aſaid *I. E.* untill the lawfull age of fourteen yeares, of her the ſaid *I. E.* pertaines, by which the ſaid *W.* the aforeſaid time of taking aforeſaid, was of the Cuſtody of the ſaid Manner of *H.* with the Appurtenances whereof, *&c.* and of the aforeſaid *I. E.* poſſeſſed, for that at the ſame time in which, *&c.* the ſaid *I. E.* was within the age of fourteen yeares: And being ſo thereof poſſeſſed, afterwards, and before the aforeſaid time of taking aforeſaid, he put his aforeſaid Cattell, in the aforeſaid place in which, *&c.* to feed on the Graſſe then thereupon growing: Which ſaid Cattell were in the aforeſaid place in which, *&c.* feeding upon the Graſſe then growing, untill the aforeſaid *I.* the day and yeare in the Declaration above ſpecified, at *R.* aforeſaid, took the aforeſaid Cattell of him the ſaid *W.* and them uniuſtly detained, againſt Sureties and Pledges, untill, *&c.* as the ſaid *W.* againſt him complaines; and this he is ready to aver, whereupon for that the aforeſaid *I.* above acknowledgeth the taking, of the aforeſaid Cattell, in the aforeſaid place in which, *&c.* The ſaid *W.* prayes Judgment and his Damages, by reaſon of the taking and uniuſt detaining of the aforeſaid Cattell, to be adiudged unto him *&c.*

The Defendant maintaines his Plea, and traverſes the Tenure in Socage.

AND the aforeſaid *I. N.* as formerly ſaith, that the aforeſaid ſixteen acres of Land with the Appurtenances, are, and at the aforeſaid time of taking

aforeſaid, above ſuppoſed to be done, were the ſole and free Tenement of the aforeſaid *I E.* as he before hath alledged, without that, that the aforeſaid *R. E.* held the aforeſaid Mannor of *H.* with the Appurtenances whereof, *&c.* of the aforeſaid *R. W.* Knight, as of his Mannor of *L.* in Socage; that is to ſay, by fealty, and the Rent of twenty pence by the yeare, every yeare, at the Feaſt of Saint *Michael* the Arch-Angell yearely to be paid, and by the Service of doing Suite at the Court of the aforeſaid *R. W.* of his aforeſaid Mannor of *L.* from three weeks to three weeks, at the Mannor aforeſaid yearely to be held, as the aforeſaid *W.* hath above alledged, and this he is ready to aver, whereupon he prayes Judgment, and the return of his Cattell, together with his Damages to him the ſaid *I. N.* to be adiudged, *&c.*

Iſſue upon the Traverſe.

AND the aforeſaid *W.* as formerly ſaith, that the aforeſaid *R. E.* held the aforeſaid Mannor of *H.* with the appurtenances, whereof, *&c.* of the aforeſaid *R. W.* as of his Mannor of *L.* in ſocage, that is to ſay, by fealty, and the rent of twenty pence by year, each year at the Feaſt of Saint *Michael the Arch-Angel*, yearly to be paid, as alſo by the ſervice of doing ſuit at the Court of the aforeſaid *R. W.* of his aforeſaid Mannor of *L.* from three weekes to three Weeks, at the ſaid Mannor yearly to be held, as he hath before alleadged, and this he prayes may be inquired of by the Country, and the aforeſaid *I. N.* in like manner, therefore command is given to the Sheriff that he cauſe to come here twelve, *&c.* By whom *&c.* And who neither, *&c.* To recognize *&c.* Becauſe as well, *&c.*

Here you have both a Declaration, an Avowry, a bar

bar to the avowry, a Re-ioynder, and a Sur-reioynder, whereby you have a full and a compleat Iſſue made up.

And here note, that this avowry is for damage feaſant, but there are ſeverall other avowries, as,

Firſt, A man may avow for ſervices due to his Mannor, as ſuit to his Court, or Suit at the Mill, *&c.*

Or for a Rent Charge, upon Preſcription to diſtrain.

Or for a Rent Charge generally, he may avow.

A man may avow for an amerciament in a Court Baron.

After iſſue ioyned, in caſe you would proceed to a Triall, your proceeds are for the making your *Venire*, and ſuing out your Record, and *Habeas corpus*, as in other actions.

Partition.

THIS Action lyes in ſeverall caſes, as where Lands diſcend by the courſe of the Common-Law, or by Cuſtome, as Gavelkinde Land amongſt Coheires or Copartners where there muſt be two at the leaſt, whether they be Sons, Daughters, Siſters, Aunts, or otherwiſe of Kin to the Anceſter from whom the Land diſcended to them.

And this partition is made four wayes for the moſt part, whereof three are at Pleaſure, and by agreement amongſt themſelves, the other is by compulſion, when any refuſe.

One partition is, where they themſelves divide the Land equally by agreement, into ſo many parts as there be of them Copartners, and each chooſeth one

one ſhare or part, the eldeſt firſt, and ſo the one after the other, as they be of age, except the eldeſt by conſent made the partition, then the choice belongeth to the next and ſo to the eldeſt laſt, according to the old Rule, he that divides, muſt not chooſe.

Another partition is, when they chooſe certain of their frejnds to make diviſion for them.

The third partition by agreement, is by drawing of Lots thus, 1. to divide the Land into ſo many parts as there be Copartners, then to write every part ſeverally in a little Scrowle or peice of paper, or Parchment, and put the ſame Scroules up cloſe into a Hat or cap, or other ſuch like thing, and then each Partner, one after the other as they be of age to draw out thereof one peice or ſcroule, whereon is written a part of the Land which by this drawing, is now ſeverally allotted unto them in Fee-ſimple.

The fourth partition, which as we ſaid, is by compulſion, comes now to be treated of, which is, where one or ſome of the Coparceners would have partition, and other ſome will not agree thereto, then they that ſo would have Partition, may bring a Writ, *De partitione faciendâ*, againſt the others that would not make partition, by vertue whereof they ſhall be compelled to part, &c.

In Kent where the Lands are of the nature of Gavelkind, they call at this day their partition, Shifting which is the ſame with that the Saxons uſed, namely, *Shaſtan*, which ſignifies to make between Coheires partition, and to aſſign to each of them their portion, in Latine it is called *Horriſtere*.

Partition may alſo be made by joynt-Tenants, or Tenants in common by their aſſent by deed between them, or by writ, by the Statute of 31. *Henry the eighth, chapter*, 32. and by the ſtatute of 33. *Henry the eighth.*

The

The proceſſe in this Action is Summons, Attachment, and Diſtreſſe infinite.

Your Summons is as follow.

The Summons in partition:

THe Keepers, *&c.* If *A. &c.* then ſummon *B.* to ſhew wherefore when they the ſaid *A.* and *B.* together and undivided, hold three acres of Land with the appurtenances of the inheritance which was *M.* Mother of the aforeſaid *A.* and *B.* whoſe heirs they are in *I.* the ſame *B.* to make partition thereof between them, according to the Law and Cuſtome of the Common Wealth of *England*, deemeth, and the ſame permitteth not to be done, moſt uniuſtly as ſhe ſaith, and have you there this Writ, *&c.*

NOte that the Summons varies in the caſe where there are three or foure Copartners, and likewiſe where it is between Joynt-Tenants, or Tenants in Common, the Summons according to the ſeverall caſes, were too large here to inſert.

Having your Summons thus made returnable of any Terme, the Defendant may Eſſoyne if he will.

If the Defendant do Eſſoyn, it reſts on the Plaintiffs part to adiourn it, as if the Summons, *Tres Michaelis*, he may adiourn to *Craſtino Martini*, and then iſſues out from the Phillizor, a Writ called a *Pone*, returnable, *Octabis Hillarii*, and then upon that returned by the Sheriff, you muſt file your *Pone* with the Phillizor, which Warrants the making out of a *Diſtringas*, returnable, *Octabis Purificationis*, and upon that get an Amerciament of five pounds, if the Defendant appeare not, then you may have an *Alias Diſtringas* returnable in *Eaſter* Term, doubling your Iſſues,

Iſſues, and ſo Diſtreſſe infinite till he do appeare.

Where the Defendant as before doth caſt an Eſſoyn, and there is no adiournment made thereof, the Defendant may enter a *Non ſuite* againſt the Plaintiff if he be carefull firſt to enter a *Ne recipeatur* with the Clark of the Eſſoynes, upon the day of the Exceptions, upon which Non-ſuite, the Plaintiff muſt begin again.

Where there are ſeverall Defendants, they may ſeverally Eſſoyn, if they would protract time before appearance, and where they Eſſoyn not upon the Summons, they may upon the *Pone*.

If they do not Eſſoyn but appear, you may declare; and your Declaration.

Buck. ß.

ANthony *Cooke* Knight, in mercy for many defaults: And the ſame *Anthony* and *Thomas Wootton Eſq*; were ſummoned to anſwer *Peter Temple* Gentleman, of a Plea, that whereas they the ſaid *Peter* and the aforeſaid *Anthony* and *Thomas* together and undivided, do hold to them and their Heires, the Mannor of *Doſſet alias Dorſet*, with the Appurtenances, they the ſaid *Anthony* and *Thomas* to make partition thereof between them, according to the form of the Statute in that caſe publiſhed and provided, do deny, and the ſame moſt uniuſtly permit not to be done, againſt the form of the Statute aforeſaid, *&c.* And whereupon the ſaid *Peter* by *T. L.* his Attorney ſayes, That whereas he and the aforeſaid *A.* and *T.* together and undivided, do hold to them and their Heires, the Mannor aforeſaid with the Appurtenances, whereof unto him the ſaid *Peter* and his Heires it belongs, to have one part of the Mannor aforeſaid with the Appurtenances, in three parts equally to be divided, and to the aforeſaid *Anthony* and his Heires,

if

it pertaines to have another part of the ſame Mannor with the Appurtenances, in three equall parts, as is aforeſaid to be divided, and unto the aforeſaid *Thomas* and his Heires, it pertaines to have a third part, the reſidue thereof to hold to them in ſeverally, ſo that the ſame *Peter*, of his part of the Mannor aforeſaid with the Appurtenances to him belonging, and the aforeſaid *Anthony* of his part of the Mannor aforeſaid, with the Appurtenances to him thereof belonging, and the aforeſaid *Thomas* of his part of the Mannor aforeſaid with the Appurtenances, to him thereof belonging; may be able ſeverally to appart: They the ſaid *Anthony and Thomas* to make partition thereof between them, according to the form of the Statute in that caſe made and provided, do deny, and the ſame moſt uniuſtly permit not to be done, againſt the form of the Statute aforeſaid; whereupon he ſaith that he is damnified, and hath Damage to the value of a hundred pounds, and thereupon he brings his Suite, *&c.*

In theſe Actions the Pleas are various, as the Title may be.

The Defendant may plead the Freehold ſolely in himſelf at the time of the Plaintiffs iſſuing forth his originall VVrit, and traverſe that they hold it together and undivided, &c. whereupon he prayes Judgment, whether Partition ought to be made between them, &c.

To this Plea the Plaintiff may take iſſue upon the Traverſe, and if ſo they may join iſſue, and ſo proceed to triall.

Upon a verdict and Judgment had for the Plaintif, he may have his VVrit of partition directed to the Sherif, commanding him to take twelve men of the county, and of the *Venue*, in the preſence of the Coparceners to make partition, by vertue of which writ

he

he ſummons a Jury of the ſaid twelve men, and in the preſence of the parties concerned, he makes partition, and then his return is as followes.

By vertue of this Writ of the Keepers of the liberty of *England* to me directed, and to this partition indented annexed *J. T. D.* Knight Sherif of the county aforeſaid (ſuch a day, year, and place) having taken with me *L. N. R. F.* and twelve free and legall men of my county, and of the *Venue* within written, in preſence of *H. L. K. M.* in the Writ aforeſaid named, in my proper perſon, I came to the tenements in the ſaid Writ named, and there by their oath (having reſpect to the true value of the ſame Tenements with the appurtenances,) The ſame Tenements into partition into three parts equally to be parted, I have cauſed, and one part of the ſame three parts (*Videlcet*) (ſuch and ſuch land ſo butted and bounded) I the Sherif aforeſaid, the aforeſaid day and year, *&c.* Thoſe to be delivered and aſſigned, have cauſed to *H. L.* in the ſaid Writ named to be had to her, in ſeveralty, according to the forme and effect of the writ aroreſaid, and as to two parts of the reſidue of th eaforeſaid Tenements in the aforeſaid writ ſpecified, I the ſherif aforſaid, certifie the Juſtices within written, that none of the part of the other two came to receive of me, the aforeſaid ſherif, the ſame 2. parts, ſo that the ſame 2 parts to the other 2 aſſigne and deliver I could not, as the writ aforeſaid exacteth and requireth, in Teſtimony whereof, as well the Seal of me the aforeſaid ſherif, as the ſeals of the aforeſaid twelve Jurors to this Partition indented, or ſet, given the day and year aboveſaid: Upon this Returne of the Sherif, the Judgment is entred, that the Partition aforeſaid made, in form aforeſaid ſhall be held firme and ſtable for ever, *&c.*

A partition thus made by the Sheriff, and by the Oath

Oath of twelve men, and Judgment thereupon given, ſhall binde an Infant, though his part be unequall.

Note a partition between Joynt-Tenants, is not good without deed, albeit it be of Lands, and that they be compellable to make partition, by the Statute of 32. *Henry* the eighth, Chapter the tenth, and 32. *Henry* the eighth, Chapter 32. becauſe they muſt purſue that Act by Writ, *De partitione faciend.*

And note that you are to take out this Writ *De partitione faciend.* Executed by the Sheriff, together with the Sheriffs return *Verbatim*, into the remembrance in the Prothonotaries Office, and then the Prothonotary ſignes Judgment thereupon.

The Fees incident to this Action you will finde in the generall Table of Fees.

We proceed now to treat of Dower.

DOwer in the Common Law is taken for that portion, *&c.* which the Widow hath for Tearm of her life, of the Lands or Tenements of her Husbands, it is called *Dower or Dowery*, as a gift, becauſe the Law it ſelfe doth (without any gift of the Husband himſelfe) give it to her, its commonly taken for the third part, which ſhe hath of her Husbands Lands after his deceaſe.

To the conſummation of this *Dower*, three things are neceſſary, Marriage, Seizin, and the Death of the Husband.

This Proviſion the Law hath made for a Widow, where the Husband hath not aſſigned in his life time, part of his Lands to his Wife.

Dower by the cuſtome of ſome places, as (Gavelkind,

kinde Land, *&c.* is to have halfe the Husbands Lands.

This Writ of Dower, lyes where a man is ſole ſeized of Lands or Tenements in Fee-ſimple or Fee-taile, during the Coverture between him and his Wife, where by poſſibility the Iſſue between them may Inherite, if ſuch a man dye, his Wife ſhall recover the third part of all the Lands, whereof the Husband was ſole ſeized, any time during the Coverture, by a Writ of Dower, though he dyed not ſeized, and although that he made Alienation thereof in his life time.

Where the Husband dyed ſeized, and the Wife brings a Writ of Dower, and recovers, ſhe ſhall recover Damages, for the Profits of the Land incurred, from the time of the Death of her Husband, but if there were any Eſtate or Alienation made of the Lands, *&c.* during coverture, ſo that the Husband dyed not ſeized, in that caſe ſhe ſhall recover no Damages for mean profits, although ſhe recover the Land.

It is not neceſſary that ſeizin ſhould continue during Coverture, for being once ſeized it ſufficeth, although he alien Lands or extingniſh Rents; yet the woman ſhall be Endowed.

But it is abſolutely neceſſary that the Marriage continue, for if that be diſſolved, the Dower ceaſeth.

In caſe of *Elopement*, which is where a Woman leaves her Husband, and goes away with an Adulterer, and dwelleth with the Adulterer, without voluntary reconcilement to her Husband, by this ſhe ſhall looſe her Dower.

A Woman

A woman ſhall not be endowed of a Common without number in groſſe, nor of an annuity, *&c.* nor of Rents, *&c.* if the Freehold of the Rents were ſuſpended before the Coverture; but ſhee ſhall be endowed of tithes, of the third part of the profits of Courts, Fines, Herriots, *&c.*

Shee ſhall be endowed according to the value of the land at the time of the aſſigment, and not according to the value as it was in the time of her Husband; whether the value of the land by building or otherwiſe be improved, or whether it be impaired by the heir.

If the wife be paſt the age of nine yeares at the time of the Death of her husband (albeit ſhe were but foure yeares old when ſhe were married) yet ſhee ſhall be endowed.

If a Woman marry before ſhee be of yeares to conſent, which is twelve in a woman, and fourteen in a man, yet that imperfect or incheat marriage (from which either of the parties at the age of conſent may diſagree) after the Death of the Husband, ſhall give Dower to the Wife.

If the Heir, *&c.* put her out within forty dayes ſhe ſhall have a Writ *De quarentina habenda*, which is a writ that the Law gives, where a man dyes ſeized of a Mannor, place, and other lands, whereof the wife ought to be indowed, there the Woman may abide in the Mannor, Place, and there live of the ſtore and profits thereof for the ſpace of forty dayes, within which time, her dower is to be aſſigned, as by *Magna Charta*, Chapter 6.

There needeth neither livery of Seiſin nor writing to any aſſignment of Dower, becauſe it is due of Common right, and the Aſſignment muſt be of ſome part of the Land or of a Rent, *&c.* iſſuing out of the ſame.

The assignment must be certaine and absolute, and by such as have freehold, or against whom a Writ of dower lyes.

Assigment of Dower must be either by the Sheriff by the Kings writ, or else by the Heir or other Tenant of the Land by consent and agreement betweene them.

A Joynture was formerly no bar of Dower at the Common Law, but now it is by the Statute of 27. *Henry the eighth*, if the Joynture be made to the VVife, according to the Purview of that Statute.

Six things are required to a Perfect Joynture.

First, It is to take effect for her life in possession, or profit, presently after the Decease of her Husband.

Secondly, That it be for tearme of her own life, or greater Estate.

Thirdly, It must be made to her selfe, and no other for her.

Fourthly, It must be made in satisfaction of her whole Dower, and not of part, *&c.*

Fifthly, It must be either expressed or averred to be in satisfaction, *&c.*

Sixthly, It may be made either before or after marriage.

If the Joynture be made before marriage, the wife cannot waive it and claim her Dower at the common Law; but if it be made after marriage, she may waive the same.

A Joynture made to the wife above or under the age of nine years is good.

The VVife shall not be endowed of Lands which the husband holdeth joyntly with another at the time

of his Death, *&c.* for that the Joynt Tenant which ſurviveth, claimeth the land by the Feoffment, and by the Survivourſhip, which is above the title of Dower; but Tenants in common have ſeverall Freeholds and inheritances, and their moities ſhall diſcend to their ſeverall Heirs, and therefore their wives ſhall thereof be indowed.

THe proceſſes incident to this action of Dower are.

Firſt, A Summons between the *Teſte*, and returne, whereof there is five returnes.

And if the Tenant neither appear, nor caſt an Eſſoyne, entring a *Ne recipiatur*, a grand *Cape* lies to ſeize the Lands, *&c.* for that for ſuch his default, the Tenant ſhall looſe his land.

But if he wage his Law of *Non Summons*, he ſhall ſave his default, and then he may plead with the Demandant.

NOte that in the Grand Cape, the Tenant ſhall be ſummoned to anſwer to the Default, and further to the demandant; but in *Petite cape*, he ſhall be ſummoned to anſwer to the default only, and not to the Demandant, and it is called a *Petite cape*, becauſe it includes leſſe then the other.

And if the Tenant by the Returne of the Summons, eſſoyne, the Demandant adjournes fifteen dayes longer, in ſuch caſe, the Attorny for the Tenant, may enter with the Phillizer, that the Tenant appeares and prayes view, *&c.*

Then a writ of view goes out, wherby the Sheriff is to ſhew the Tenant the lands in queſtion, which ſuppoſeth the tenant knows not wel what lands it is that the Demandant asketh, by the returne of which writ

of View, the Tenants Attorney takes a Declaration.

NOte that where a default is made after appearance, there a *Petite cape* is to iſſue forth at the Demandant, his ſuit which is made, as likewiſe the Grand Cape by the Phillizer of the County where the land lieth.

The forme of the Summons is thus.

THe Keepers of the liberty, *&c.* to the Sheriff of *L.* greeting, command *J. D.* that juſtly *&c.* he render *E. D.* the third part of ten Meſſuages, five Cottages, two hundred acres of Land, three hundred acres of Meadow, and two hundred acres of paſture in *C.* and *B.* as her dowry, by the Endowment of *G. D.* in time paſt her Husband, *&c.* whereof ſhee hath nothing, *&c.*

In caſe the Tenant appeare upon the ſummons, *&c.* Then you declare as followes.

Lincolne ſſ.

E. D. VVidow, which was the wife of *G. D.* by *A. B.* their Attorny, demand againſt *J. D.* the third part of ten Meſſuages, five Cottages, and two hundred acres of Land, three hundred acres of Meadow, and two hundred acres of Paſture with the appurtenances, in *C.* and *B.* &c. as the dowry of her the ſaid *E. D.* by the endowment of *G. D.* in time paſt her Husband, *&c.*

To this action there may be ſeverall Pleas, as the caſe may require.

The moſt generall Plea is, (*Ne unques ſeizi que Dower*) That is to ſay, That the Husband was never ſeized of any Eſtate, whereof the VViſe can be endowed, the forme whereof is as followes.

Ne

Ne unque ſeizi que Dower, pleaded in Dower.

AND the aforeſaid Defendant by *A. B.* his Attorney, comes and ſayes, that the aforeſaid *A.* ought not to have her Dowery of the Meſſuage and Tenements aforeſaid, with the Appurtenances whereof, *&c.* Of the Indowment of the aforeſaid *D.* once her Husband, *&c.* Becauſe he ſaith, That the aforeſaid *D.* once her Husband, *&c.* neither at the day wherin he marryed the aforeſaid *A.* nor at any time after, was ſeized of the ſame Meſſuage and Tenements, with the Appurtenances whereof, *&c.* of ſuch an Eſtate, ſo that the aforeſaid *A.* thereof might be Indowed.

And of this he puts himſelfe upon the Country, and the Plaintiff in like manner, therefore command is given to the Sheriff, that he cauſe to come here twelve, *&c.*

There is a Plea likewiſe of *Non-tenure*, which is as followes.

Non-tenure pleaded in bar of Dower.

AND the Defendant by *J. B.* his Attorney, comes and ſayes, that he cannot render the aforeſaid *A.* her Dowery, of the Mannor aforeſaid with the Appurtenances, becauſe that he is not thereof Tenant, as of the free-hold, nor was the day of the iſſuing forth of the originall Writ of her the ſaid *A.* nor at any time after: And this he is ready to aver, whereupon he prayes Judgment of the Writ aforeſaid, *&c.*

Iſſue upon the non-tenure

AND the aforeſaid *A.* ſaith, that her Writ aforeſaid, for the reaſons before alledged, ought not to be quaſhed, becauſe ſhe ſaith, that the day of the iſſuing forth of the originall Writ of her the ſaid *A.* to witt (ſuch a day and yeare) the aforeſaid Defendant was Tenant of the Mannor aforeſaid with the Appurtenances, as of his Free-hold, as by the ſame Writ is ſuppoſed; and this he prayes may be inquired of by the Country, and the aforeſaid Defendant in like manner, therefore Command is given to the Sheriff, that he cauſe to come here twelve, *&c.*

Alſo *Nonage* may be pleaded in bar of Dower, and then it is thus.

Nonage in bar of Dower.

AND the aforeſaid *R. M.* by *T. G.* his Attorney, comes and ſayes, That the aforeſaid *N.* ought not in this behalfe to have Dowry, becauſe he ſaith, That the aforeſaid *N.* at the time of the Death of the aforeſaid *R.* in time paſt her Husband, of whoſe Endowment, *&c.* ſhe was not of that full age, that ſhe ſhould deſerve Dowry, that is to ſay, of nine yeares and a halfe: And this he is ready to aver, whereupon he prayes Judgment, whether the aforeſaid *N.* ought to have her Dowry of the Tenements aforeſaid with the Appurtenances, *&c.*

Iſſue of full Age.

AND the aforeſaid *N.* ſaith, That ſhe the aforeſaid *N.* was at the time of the Death of him the

the ſaid *R.* in time paſt her Husband, *&c.* Of ſuch age as that ſhe might deſerve Dowry; that is to ſay, Of nine yeares and a halfe and above, and this ſhe prayes may be inquired of by the Country, and the ſaid *R. M.* in like manner, *&c.* Therefore Command is given to the Sheriff, that he cauſe to come here twelve, *&c.*

Elopement may alſo be pleaded in bar of Dower, and then its thus.

Elopement in Barre.

AND the aforeſaid *J.* and *L.* by *T. L.* his Attorney, comes and ſayes, That the aforeſaid *R.* and *A.* ought not to have againſt them the Dowry aforeſaid, of the Mannor and Tenements aforeſaid with the Appurtenances, of the Endowment of the aforeſaid *E.* in times paſt her Husband, *&c.* Becauſe they ſay, That the aforeſaid *A.* in the life time of the ſaid *E.* in times paſt her Husband, *&c.* Of her owne voluntary will and accord at *B.* in the County of *M.* left him the ſaid *E.* in time paſt her Husband, and went from him with one *M. R.* in the Pariſh of *S.* in the County of *M.* and after there with the ſame *M.* did leade her continued life in Adultery, during the life of him the ſaid *E.* in time paſt her Husband, *&c.* Without that, that the aforeſaid *A.* to the ſaid *E.* her Husband, in the life time of the ſaid *E.* in time paſt her Husband, *&c.* was reconciled unto him; and this they are ready to aver, whereupon they pray Judgment, whether the aforeſaid *R.* and *A.* in this behalfe, ought to have her Dowry, of the Mannor and Tenements aforeſaid with the Appurtenances, of the Endowment of the aforeſaid *E.* in time paſt her Husband, *&c.*

Reconcilement pleaded to the Elopement

AND the aforeſaid R. and *A.* ſay, That they by any thing before alledged, ought not to be debarred from having the Dowery of the aforeſaid *A.* of the Mannor and Tenements aforeſaid with the Appurtenances, againſt them the aforeſaid *J. L.* becauſe they ſay, That after the departure aforeſaid, by the ſaid *J.* and *L.* ſuppoſed to be made, the aforeſaid *E.* in his life time, [illegible] the ſaid *A.* of his own accord, and without Eccleſiaſticall compelling, at *L.* did reconcile, and ſuffered her to live with him; and this they are ready to aver, whereupon they pray Judgment, and the Dowery of her the ſaid *A.* of the Mannor and Tenements aforeſaid with the Appurtenances, together with their Damages, by reaſon of the Detainer of the Dowery aforeſaid, to be adjudged unto them, *&c.*

Iſſue upon the reconcilement

AND the aforeſaid *I.* and *L.* ſay, That the aforeſaid *E.* in his life time, did not reconcile in manner and form, as the aforeſaid R. and *A.* have above alledged, and of this they put themſelves upon the Country, and the aforeſaid *R.* and *A.* in like manner, therefore Command is given to the Sheriff, that he cauſe to come here on three weeks after the holy *Trinity*, twelve, *&c.*

A man may call to warranty in Dower, and then is the Party who is called to warranty, ſummoned in the County where he lives, and that by the ayde of the Court, and this is called a Counter-plea of the Voucher in Dower, and is thus.

Counter-plea

Counter-plea of the Voucher in Dower

AND the aforeſaid *J.* by *C. B.* his Attorney, comes and calls thereupon to warranty *R. C.* Gentleman, ſummoned in the County aforeſaid, by the ayde of the Court, *&c.*

To this the Defendant may reply, that the Party calls to warranty, hath nothing in the Lands, *&c.*

And the aforeſaid *I.* ſayes, That neither the aforeſaid *R.* whom, *&c.* nor any of his Anceſtors, had any thing in the Tenements aforeſaid with the Appurtenances, in his Demeſne as of Fee, in Reverſion, or, &c. from the time of the Death of the aforeſaid *W. C.* in time paſt her Husband, &c. unto the day of the iſſuing forth of the originall Writ of her the ſaid *I.* to witt (ſuch a day and yeare) ſo that he could thereof Enfeoff the aforeſaid *John*, or any of his Anceſtors: And this he prayes may be inquired of by the Country, and the aforeſaid *John* in like manner, therefore Command is given to the Sheriff, that he cauſe to come twelve, &c.

An Annuity may alſo be pleaded in bar of Dowry, but is too long here to recite.

To this action, in caſe the Tenant have no ſpeciall matter to plead in bar, then he may confeſſe the Action by *Non ſum Informatus*, or let it paſſe by default, as in the enſuing.

Non Informatus in Dower.

AND the aforeſaid *E.* by *T. S.* his Attorney, comes, and the ſame Attorney ſayes, that he is not informed by the ſayd *E.* his Clyent, of any anſwer for the aforeſayd *E.* to the aforeſaid *P. S.* in the

the Plaint aforesaid to be given, and nothing other he thereupon saith, by which the same *P. S.* should remaine against the aforesayd *E.* thereupon undefended: Therefore it is considered, that the aforesayd *P. S.* shall recover her seizin against the aforesaid *E.* of the third part of the Mannor, Parke, Free-warren, Tenements, and Advowson aforesaid with the appurtenances, and the aforesaid *E.* in mercy, *&c.*

And upon this the aforesaid *P. S.* prayes the Writ of the Keepers of the Liberty of *England*, to the Sheriff of the County aforesayd to be directed, to cause him to give her full possession of the third part aforesayd with the appurtenances, and it is granted unto her, returnable here in eight dayes after Saint *Michael*, and also the same *P. S.* sayes, that the aforesayd *T.* in time past her Husband, *&c.* dyed seized of the Mannor, *&c.* in his Demesne as of Fee, and of the Advowson aforesaid, as of his Fee and right, and prayes the Writ of the sayd Keepers of the Liberty, *&c.* to the Sheriff of the County aforesayd to be directed, to inquire of Damages, and it is granted unto her, returnable at the aforesayd Terme, *&c.*

Note that in this, as other reall actions, when you plead for the Defendant, you say onely (*Comes and sayes*) and not as in other Actions, Defends the force and injury, *&c.*

When upon Issue joyned you would goe to tryall, you must proceed with your *Venire facias*, and *Habeas corpora*, and Record, as in other Actions, and upon tryall the Jury doe give in damages for the main profits, from the death of the Husband, and for that you shall have Execution made by the Clark of the Judgments who entreth up your Judgment.

And then you have a Writ to the Sheriff, to give possession of a full third part, *&c.* which Writ being executed by the Sheriff, is thus returned.

BY

BY vertue, *&c.* and to this Schedule annexed (ſuch a day and yeare) I have cauſed to be delivered to *J. B.* Widow, in the aforeſayd Writ named, plenary ſeizin of the third part of the Mannor of *L.* with the appurtenances in the ſame Writ ſpecified (*Viz.* and rehearſe the particulars as in the VVrit) to be held to the aforeſayd *I. B.* in ſeveralty, by metes and bounds, in the name of the whole Dower of her the ſayd *I. B.* to her the ſayd *I. B.* contingent of the whole Mannor in the VVrit ſpecified, as by the VVrit aforeſayd to me is commanded, *&c.*

Formedon.

In the next place we come to treat of an Action called Formedon, *which is a reall Action, and that is in three Wayes.*

THE firſt is *Formedon* in the Diſcender, which lyeth where Tenant in tayl enfeoffeth a ſtranger, or is diſſeized and dyeth, the Heir ſhall have a VVritt of *Formedon* to recover the Land.

The ſecond is *Formedon* in the Remainder, and that lieth where one gives lands in the tayl, and for default of iſſue, the remainder to another in tail, & that for default of ſuch iſſue the land ſhal revert to the Donor, if the firſt Tenant in tayl dye without iſſue, he in the Remainder ſhall have this Writ.

The third, is a *Formedon* in Reverter, and that lieth, where the Tenant in Tayle dies without iſſue, and he in the Remainder dies alſo without iſſue, then the Donor or his Heirs, ſhall have a *Formedon* in Reverter.

VVhere

VVhere Tenant in tayle aliens or is diſſeized, or if a Recovery be had againſt him by default, and that he die, his Heire ſhall have a *Formedon*, for the Heire ſhall not have other Recovery for the poſſeſſion of his Anceſtor then by *Formedon*; but if he be outed of his owne poſſeſſion, as if he be ſeized and put out, he ſhall have his VVrit of Aſſize.

Formedon lies by the Heire of a Gift made before the Statute of *Weſtminſter* 2. where the Donee after the ſtatute aliens and dies.

Where there is a Tenant in Dower or by the Curteſie.

The Reverſion to another in tayle, if one intrude after the Death of the Tenant in Dower, or by the Heir of curtiſie, he in the Reverſion ſhall not have intruſion, but a *Formedon*.

VVoman in tayle takes a husband, which aliens, & after they are divorced, and after the wife dies, the Wife ſhall in this caſe have a *Formedon*, and not a *Cui in vita*.

If Tenant in Tayle lets for life, and the Tenant for life aliens in fee, the Tenant in tayle ſhall have a *Formedon* at his pleaſure.

VVhere land is given to one for life, the Remainder to the Father in tayle (if it were executed in the Father) and he aliens; the Iſſue may have a *Formedon in Deſcender* generally, or may have a ſpeciall VVrit, making mention how it was given for life, the Remainder to his Father in Tayle, and one or other is good.

In conveyance of degrees, you neede not name him Heir, but Son of him which was not ſeized, but it is a ſurer way to name him ſon & heir to every one, if he were ſeized or not; but he cannot omit any in his VVrits which were ſeized.

If the Demandant omit in *Formedon*, one who held the

the Eſtate, that is to ſay, who was ſeized, the VVrit ſhall abate

The Demandant in this writ ought to make his diſcent by all which hold the Eſtate, otherwiſe the VVrit ſhall abate.

Though the Demandant be made Heire to him which dyed in the life time of his Father, which was not ſeized, yet the writ ſhall not abate, but is good.

Note by the Regiſter it is held, that he ought to make him Sonne to every one, and Sonne and Heire to him which laſt holds the Eſtate; but if he makes him Sonne and Heire to every one that is more, and good, notwithſtanding that every one did not hold the Eſtate.

The Writ is not the worſe, although in the ſame it be mentioned that he is heire of one, or that he ſhould have ſcarce beene heire to him if he had lived, if he be heire to him, that laſt was ſeized.

The Demandant in *Formedon*, ought to name him Sonne and Heire to him that was ſeized, but if one ſurvive his Father, and were not ſeized, he neede not name himſelfe Heire but Sonne only.

Formedon did abate, for that the Demandant made himſelfe Coſin and heir to the Donee where his Father was ſeized after the Death of the Donee, and no mention was made of him.

Eſplees ſhall be alleadged in *Formedon in Reverter*, in the Donor and in the Donee, and in *Formedon in Diſcender*, and Remainder, in the Donee only.

Thoſe Eſplees is as it were the ſeizin or poſſeſſion Of a thing, Profit, or Commodity, that is to be taken; as of a common, the Eſplees is the taking of the graſs or Common by the mouthes of the Beaſts that Common there, of an Advowſon by taking the graſs, tithes by the Parſon preſented thereto; of wood, the

the ſelling of wood, of an Orchard, the ſelling of apples and other fruit growing there: Of a Mill, the taking of Toll is Eſplees, and of ſuch like.

NOte that in a VVrit of Right of Land or Advowſon, *&c.* The Demandant ought to alleadge in his Declaration, that he or his Anceſtors tooke the Eſplees of the thing in demand, or otherwiſe the Pleading is not good.

Formedon in Remainder, he alleadgeth Eſplees in the Tenant for life, and not in the Donor.

Formedon in the Remainder, he counts upon the matter without laying Eſplees in the Donor, and it is good.

Of what things a Formedon *lieth, and of what not.*

FORMEDON lieth of Gorſe, but not of an Advowſon.

It lies of Paſture for ten beaſts, or a certaine number, but not of Common, for there a VVrit called (*Quod permittat*, &c.)

Formedon lies of Common in groſſe.

Formedon lies of a Corody, that is to ſay, of Rent and certaine breads, *&c.*

It lies for the moiety, profit of a Mill, which is granted to one and the Heirs of his body, and the Donee dyeth, and his Heire is deforced of this profit, now the Heire ſhall have a VVrit of of *Formedon in the Diſcender* for this profit.

The forme of the writ when it is in the Diſcender runs thus.

In the Diſcender.

THe Keepers, *&c.* to the Sherif of *L.* greeting; command *T. B.* that *&c.* he render, *I. C.* the moiety of the profits comming of two Mills of him the ſaid *T. B.* in *M.* which *R. B. &c.* gave to *T. C.* and to the heires of his Body iſſuing, and which after the Death of him the ſaid *T. C. &c.* Ought to diſcend, *&c.*

If the *Formedon* be in the Remainder, then the Writ runs thus.

In the Remainder.

THe Keepers of the Liberty, *&c* to the Sheriff of *G.* greeting, command *A.* that he render *B.* one Meſſuage, and twenty acres of Land, *&c.* which *C.* gave to *D.* and the Heires of his Body iſſuing, ſo that if the ſame *D.* died without Heire iſſuing of his Body, the aforeſaid Meſſuage and twenty acres of Land with the appurtenances, ſhould remaine to the aforeſaid *B.* and his Heires, and which after the Death of the aforeſaid *D.* to the aforeſaid *B.* ought to remaine by the forme of the Donation aforeſaid, becauſe the aforeſaid *D.* died without Heire of his Body iſſuing, as its ſayd, *&c.* unleſſe, *&c.*

If the *Formedon* be in the Reverter, then thus.

In the Reverter.

THe Keepers of the liberty, *&c.* to the Sherif of *G.* greeting, command *A:* that he render *B:* one meſſuage and twenty acres of Land with the appurtenances, in *G:* which *C.* Father of the aforeſaid *B.* whoſe

B. whoſe Heire he is, gave to *J.* and *E.* his Wife, and to the Heires of their Body iſuing; and which after the Death of the aforeſaid *J.* and *E*, ought to revert to the aforeſaid *B.* by form of the gift aforeſaid, for that the aforeſaid *J.* and *E.* dyed without Heires iſſuing of their Bodyes, as he ſayes, *&c.*

This Writ is called a Summons, and hath nine Returns, betwixt the Teſte and the return, and the Proceſſe are the ſame which are in Dower after the Summons; that is a Grand *Cape*, Writ of *View*, and *Petite Cape.*

In this Action, as alſo in that of Dower, and other reall Actions, the Plaintif is called Demandant, and the Defendant Tenant, and in mixt Actions, Plaintiff and Defendant.

Note that there is great care to be taken by the Attorneys on both ſides, in the courſe of caſting Eſſoynes, adjourning and entring *Ne recipiatur* with the Clark of the Eſſoynes, and getting *Non ſuites*, for that thereby much prejudice or advantage may come to their Clyents cauſes.

If we ſhould now in this Action, as in that of Dower, diſcend to the ſeverall Declarations, in order to the ſeverall *Formedons in Diſcender, Remainder*, and *Reverter*, together with the various Pleas thereto, it would take up more room, then can be ſpared in this little Tract.

Let it ſuffice that we told you that the Proceedes were much alike to that in Dower.

Let's proceed now to Quare Impedit.

Quare Impedit is a Writ, and it lyeth where a man hath an Advowſon, and the Parſon dyeth, and another

another preſenteth his Clark, or diſturbeth me to preſent, then he may have the ſaid Writ.

Aſſize of *Darreyne preſentment* lyes, where I, or my Anceſtors have preſented before, and where a man may have an Aſſize of *Darreyn preſentment*, he may have alſo a *Quare Impedit*, but not contrariwiſe.

Alſo if the Plea be depending between two Parties, and be not diſcuſſed within ſix Months, then the Biſhop may preſent by *Lapſe*, and he that hath right to preſent, ſhall recover his Damages, as it appears by the Statute of *weſtminſter* 2. Chapter the fifth.

Alſo if one have right to preſent after the Death of a Parſon, and bringeth no *Quare impedit*, or *Darreyn preſentment*, but ſuffereth a Stranger to uſurp upon him, yet he ſhall have a Writ of right Advowſon, but this Writ lyeth not, unleſſe he claim to have the Advowſon to him and his Heires in Fee-ſimple.

A *Quare impedit* may be brought by him who hath a Grant of the next avoydance.

It lyes for the Moiety, or third part of the Advowſon, and of the Advowſon, or Moiety of the third part.

It lies for a Chantry which is a Donative, and he hath it by Letters patents, and that it be void, and he preſent to it his Clarke, who is diſturbed by another, or another preſented to the ſaid Chantry, he which hath the Right, ſhall have his *Quare impedit*.

Formerly a *Quare impedit* might be brought for an *Abbey, or Priory*.

A *Quare impedit* lay likewiſe for an Hermitary, its brought formerly againſt the Biſhop, together with others that claim or diſturb: The form of the Writ generally is thus.

Quare impedit.

THE Keepers of the Liberty of *England*, *&c.* to the Sheriff of L. Greeting, *&c.* Command *A. B.* that juſtly, *&c.* he permit *T. L.* to preſent a fit Parſon to the Church of *L.* which is voide, and belongs unto his Donation, *&c.*

This Writ is a Summons at the Plaintiffs ſuite, and if there be two or three Defendants, they may all eſſoyn one after the other, and after they have eſſoyned, your proceeds are the ſame, as in the Action of Partition by a *Pone* and *Diſtringas*, which makes the Proceedings in this Action very tedious, the Defendant uſing all the poſſible delayes he can, for that moſt uſually he hath gotten into poſſeſſion, and ſo holdes them Plea with their own Weapons, and gaines many times a yeare or two the profits of the Tythes.

But in caſe the Church be voide, and that the Plaintiff do feare that the Defendant will get in, or formerly that the Biſhop would Collate his Clark, then he might have a Writ directed to the Biſhop, which is called *Ne admittas*, and this Writ muſt be brought, while the Action is depending in the Common Bench, whether by *Quare impedit*, or *Darreyn preſentment*, and this Writ ought to be ſued within the ſix Months after the voydance, for after the ſix Months he ſhall not have this Writ, for then the Living may be preſented unto by *Lapſe*, and therefore it is in vain then to ſue this Writ, for that the Title of preſenting is devolted to the Biſhop, but the King might ſue this Writ after the ſix Months, having a Writ of *Quare impedit* or *Darreyn preſentment* depending, according to that *Maxime*, *Nullum tempus occurrit regi*, and the Writ of *Ne admittas*, is as followes,

Jowes, in caſe it were for the King in his time.

A Ne admittas.

CHARLES by the grace of God, *&c.* To the Venerable Father in Chriſt *W.* by the ſame grace, Biſhop of *Wincheſter* greeting, We prohibit you, that you admit not any Parſon to the Church of S. which is void, as its ſaid, and for the Advowſon whereof there is contention moved in our Court between us and *A.* (If between private perſons) then (between *A.* and *B.*) untill it be diſcuſſed in the ſame Court, whether unto us or unto the aforeſaid *A.* it pertaineth to preſent unto the Advowſon of the ſame Church, *&c.*

Note that the Defendant as well as the Plaintiff, may ſue out this Writ, if the Defendant do ſuppoſe that the Biſhop will admit the Clark of the Plaintiff, the Suite depending, but as we ſaid before, this Writ of *Ne admittas* lyes not, unleſſe the Plea be depending in Court, by *Quare impedit*, or *Darreyn preſentment*, and for that purpoſe there is a Writ in the Regiſter, directed unto the cheife Juſtice of the Comm n Bench, to certifie the King in the Chancery, whether there be any Plea depending before him and his Companions, by Writ between (ſuch and ſuch) and by this it ſeemed, that the *Ne admittas* ſhould not be granted, before the King were certified in Chancery, that ſuch a Plea of *Quare impedit*, or *Darreyn preſentment*, were depending in the Common Bench: But at this time the courſe is otherwiſe, that the *Ne admittas* may be granted out of the Chancery directed unto the Biſhop, that he ſhall not admit, *&c.* before that the King be certified in Chancery, that ſuch Plea of *Quare impedit* or *Darreyn preſentment* is depending in the Common Bench.

And if the truth be that there be no ſuch plea depending in the common Bench, then the party greived may require the cheife Juſtice to certifie the King in his Chancery, that no ſuch plea is there depending, upon which the party greived ſhall have a writ to avoide the *Ne admittas*.

If the Defendant or Defendants in this action do appeare, you muſt prepare your Declaration, wherein you muſt lay down your Title, which many times cauſeth the Declarations and pleadings to be very long in this action, and therefore cannot be expected to be inſerted here, as in other ſmall ones.

In caſe after ſpeciall pleadings, you come to an Iſſue, and having your iſſue ioyned, and your paper booke made up, and that you would go to triall, you muſt make yout *Venire facias*, which differs not from other *Venire facias*, but only in theſe words, (of a Plea of *Quare impedit*) and that made, ſigned, ſealed, and returned, you muſt ſue out your *Habeas corpus*, and proceede with your Record, as in other.

When you have a verdict for the Plaintiff, and the *Poſtea* returned, and Judgment entred; you may then have a writ to the Biſhop, to admit your Clark, or to the Metropolitan, which is as thus, when the Recovery is had againſt the Biſhop himſelfe.

The King, *&c.* To the venerable Father in Chriſt *W. Biſhop* of *Wincheſter* greeting. VVhereas *T. L.* Knight, in our Court, &c. hath recovered againſt you his preſentation to the Vicaridge of *W.* We command you, that at the Preſentation of him the ſayd T. to the aforeſaid Vicaridge, you admit a fit perſon, &c.

And if a man have his recovery againſt any other then the Biſhop; then the VVrit that ſhall be made unto the Biſhop ſhall be in this wiſe.

VVhereas

WHereas *T. L.* Knight, hath recovered againſt *I. P.* his Preſentation, *&c.* VVe command you, that notwithſtanding the claime of the aforeſaid *I. P.* at the preſentation of the aforeſaid *T. L.* you admit a fit perſon, *&c.*

Note that upon this VVrit, he ſhall have an *Alias*, and a *Plures*, if the Biſhop do not execute the VV , and an Attachment againſt the Biſhop if neede be.

Come we now to Actions of Waſte.

THIS Action lies, where Tenant for Tearm of yeares, Tenant for Tearme of life, Tenant for Tearme of anothers life, Tenant in Dower, Tenant by the Curteſie of *England*, or Guardian in Chivalry, doth make waſte or Deſtruction upon the Land or Houſes, that is to ſay, pulleth down the houſe, cutteth down timber, or ſuffereth the houſe willingly to fall, or diggeth the ground, then he in the Reverſion ſhal have a VVrit for the waſte, and ſhal recover the place where the waſte was done, and treble damages agai ſt him that ſo committed waſte.

But if a man cut downe Timber without licenſe, and therewith repaire old houſes, that is held no waſte, but if he therewith buil new , then the cutting downe of ſuch Timber is waſte alſo.

The cutting downe of underwood, or Willowes, which are no timber, ſhall not be ſayd to be waſte; but where they grow in the ſight and ſhadow of the houſe.

There are both negligent and voluntary waſts, and theſe are alike puniſhable, as where the Tenant or Leſſee is bound by Law to keepe the houſe in good repaire, as they were, when he came to them.

In this caſe if he do not ſo, but ſuffer any part of it, by his negligence to grow ruinous, this is Waſte, for which the Leſſor, may ſue the Leſſee.

Where there is no timber upon the Lands to make repaire, yet is it waſte to ſuffer it to decay, for this, that the Tenant muſt procure Timber at his owne charge.

Its waſte where a man proſtrates, abates, or breakes downe any of the houſing, either the whole or part (that is) any of the principall Walls, or Walls of partition in Chambers, whether they be of ſtone or Mud.

Where by a violent tempeſt, *&c.* the houſe comes to be uncovered, it ought to be repaired by the Tenant in convenient time, otherwiſe it is waſte, to ſuffer the houſe to be burnt by negligence, &c. is waſte.

If the houſe be ruinous, when the Tenant firſt comes into it, and he pull it downe and do not build it up againe, this is waſte.

Where a man either takes away, pulls, or breakes downe the Waine ſcotes, Doores, Windowes, Benches or any other things that are inſeparable incidents of the houſe, being ſet up and faſtened by the Leſſor or Leſſee, or other, is waſte.

What

What is ſaide to be Waſte in Trees or Woods.

WHere there is Oake or Aſh which are held Timber, in moſt Countryes, (and Elme in ſome Countries where Timber is ſcarce) whether young or old, above or under twenty yeares of age, to ſell this, or to imploy it to build a new houſe, or a new roome, or to any other purpoſe then to the Repaire of the old houſe, or houſing which are on the Land, or were at the time of the Leaſe, &c. in decay by age or Tempeſt, is Waſte.

If a man fell timber, although with an intent for Reparations, and if he after ſell it or imploy it to any other uſe, this is waſte, and if after ſale he buy it againe, and then imploy it for Reparations, yet this hath been held to be waſte.

Where a man fells Timber for Reparations, and ſo imploy it, yet if it be done at ſuch an unſeaſonable time, as that the Timber dye in the root; this is waſt.

To cut downe a wood, and after to ſuffer cattell to crop it when its newly felled, whereby it is killed, or to roote and ſtubb it up, this is waſte.

To cut downe Timber Trees for fire-boote, hedge boote, &c. where there is enough of other boot, this is waſte.

To cut down ſuch Trees for fiering, as are fit for better uſe, being Timber, and only hollow, and dry at the top, is ſaid to be waſte.

But if they be hollow, dry, and dead throughout, that they bare neither fruites nor leaves in Summer, if the Tenant cut down ſuch Trees for fire-boot, it is no waſte.

To cut down more for fire-boot, hedge-boot, and

houſe-boot, (to keep it as he found it) then is neceſſary, or to cut down green wood when there is ſufficient dry, and dead wood, is waſte.

To cut down Fruit-Trees, Apple-Trees, or Pear-Trees, is waſte, if they be growing in a Garden, although for Reparation, is waſte.

Such Fruit-Trees although halfe broken by the winde or otherwiſe, if they do yet beare fruit, or the young ſprings of them, that may beare fruit, if the Tenant cut them down, or pull them up, it is waſte.

Where a man eares up deep Meadow, not plowed in mans memory, or grubs up wood by the roots, and turnes it into arable, or on the contrary, turnes arable into wood, its waſte.

To open or digg new Quarries, for Coale, ſtone, Mettall, Gravell, Lyme, Clay, or the like; this, unleſſe there be ſpeciall words in the Leaſe to warrant it, is waſte, although it be no waſte for a man to digg forward in a Myne that was opened before.

Its no waſte to digg the Land for Gravell, Clay, *&c.* For neceſſary Reparations, *&c.*

HAving gone thus far in ſhewing what is waſte, let the Attorney be well adviſed he bring not an Action of waſte, where the Leaſe or other Writing, by which the Tenant holdeth or claimeth, have not that clauſe in it (without impeachment of waſte) in which caſe the leſſee can do no waſte, *&c.*

For the unfolding of this clauſe (without impeachment of waſte) obſerve that

An impeachment of waſte doth ſignifie a reſtraint from committing of waſte, in Lands or Tenement, *&c.*

And this word (without) added to impeachment of waſte intimates a liberty to commit waſte, and an Eſtate

Eſtate without any ſuch reſtraint.

Thoſe and the like words inſerted in the Deed, *&c.* are ſaid to be annexed to the Eſtate, and they do change the quality of the Eſtate, and make the Tenant herein, in the nature of a Tenant in Taile, and it adds that priviledge thereunto, that they give the Leſſee a Power and Intereſt to make waſte, and to diſpoſe the things to his owne uſe, and here if the Leſſor bring an Action of waſte, the Tenant may bar him with this clauſe.

If it be not thoſe very words, or of the like ſence, they are not good, for if the words be without impeachment of waſte, by any Writ of waſte, the words in this caſe are more tyed up, and are not ſo large, they give not ſuch a power to the Tenant, nor alter the property, they only diſcharge the Action, ſo that the Land-Lord can bring no Action againſt the Tenant for the waſte done.

The words (without impeachment of waſte) muſt be inſerted in the ſame Deed, whereby the Eſtate is made, or another Deed made at the ſame time, for if he make his Leaſe without this clauſe, and after willeth that the Leſſee ſhall hold without impeachment of waſte; its held thoſe words work nothing, either to diſcharge the Action, or give an Intereſt.

If a man make a Leaſe for life, and by his Deed grant that if any waſte be done, it ſhall be redreſſed by Neighbours, and not by ſuite or Plea, yet an Action of waſte will lye.

This priviledge gained by thoſe words, where it is, may be loſt, for it is annexed only to privity of Eſtate: And therefore if one that hath this priviledge annexed to his Eſtate, agree to change his Eſtate, the priviledge is gone, as where he that hath a Leaſe for yeares, with this clauſe in his Deed, accept

ceptof a Deed of confirmation of his Eſtate without this clauſe.

The Proceſſes incident to this Action are.

1. A Summons which is made by the Curſitor of the County, where the Houſe or Land lyes.

This Summons if againſt a Tenant in Dower, is as followes.

THE Keepers of the Liberty of *England*, *&c.* To the Sheriff of *L.* *&c.* If *A D.* ſhall ſecure thee, *&c.* Then ſummon by good Summoners *T B.* which was the VVife of *C.* that ſhe be before our Juſtices at *Weſtminſter*, on the morrow after the holy *Trinity*, to ſhew wherefore ſhe hath made waſte, ſale, and Deſtruction, in the Lands, Houſes, VVoods, and Gardens; which ſhe holds in Dowry of the Inheritance, of the aforeſaid *A.* in *N.* to the diſinheriting of him the ſaid *A.* &c.

Neither in this VVrit nor in a VVrit of waſte againſt a Guardian, a man ſhall not be tyed to reherſe the Statute which gives a VVrit of VVaſte, for that very reaſon, that they were actionable before the Statute.

If the VVrit be againſt Tenant for Tearm of life or of yeares, then it goes in this form.

THE Keepers, *&c.* if *A.* *&c.* VVherefore by the Common Counſell of the Common-VVealth of *England*; It is provided that it ſhall not be lawfull, for any to make waſte, ſale, or deſtruction, in Lands, Houſes, VVoods, or Gardens; the ſaid *B.* of Lands, Houſes, and Gardens, in *L.* which the aforeſaid *A.* demiſed unto her, *&c.* hath made waſte, *&c.*

This VVrit being returnable on the day of three weeks after Saint *Michael*, the Defendant may if he pleaſe, Eſſoyn upon that rerurn, which if he do, then the

the Plaintiff may adjourn it, unto the morrow after Saint *Martin*, which if ſo, then the next Proceſſe is a *Pone*, which is to be made by the Phillizer of the County, and may be made returnable in eight dayes of Saint *Hillary*.

Upon the return of this *Pone*, and filing it with the Phillizer, he maketh out a *Diſtringas* which you may have returnable in eight dayes of the Purification of the bleſſed Virgin *Mary*, as we ſhewed before in the caſe of Partition, *&c.* And upon that *Diſtringas* you may have an Amerciament, in caſe the Defendant appeare not; and then an *Alias* and *Plures Diſtringas*, and further Amerciaments. And as I told you before in other Actions, in caſe the Defendant Eſſoyn not upon the Summons, he may upon the *Pone*.

In caſe the Defendant appeare, and that you declare, your form is as followes; in caſe it be againſt Tenant for yeares.

Wilt. ſſ.

A Knight and Baronet, was ſummoned to anſwer *W. Earle* of *S.* of a Plea wherefore, whereas by the common Councell of the Common-Wealth of *England*, it is provided, that it ſhall not be lawfull for any to make waſte, ſale, or deſtruction of Lands, Houſes, Woods, or Gardens, to him demiſed for Tearme of life or yeares, he the ſaid *A.* of houſes in *D.* which he held for tearme of yeares, by the demiſe of the aforeſaid Earle, hath made waſte, Sale, and deſtruction, to the diſinheritance of him the ſaid *Earle*, and againſt the forme of the proviſion aforeſaid, &c. and whereupon the ſame *Earle* by *E. H.* his Attorny ſayes, that whereas he himſelfe was ſeized of one meſſuage with the appurtenances called *B.* Farme houſe in *D.* aforeſaid in his Demeſne as of Fee, and being ſo thereof ſeized, (ſuch a day and yeare)

yeare) at *D.* aforeſaid did demiſe the meſſuage aforeſaid, with the appurtenances (amongſt other things) to the aforeſaid *Anthony*, to have and to hold to him the ſayd *A.* and to his Aſſignes, from the Feaſt of Saint *Michaell* the Arch-Angell then laſt paſt, unto the end and tearme of twelve yeares from thence next following, fully to be compleate and ended, by virtue of which demiſe, the aforeſaid A. into that Meſſuage with the appurtenances did enter, and was thereof poſſeſſed, and he being thereof poſſeſſed, the ſame A made waſte, ſale, and deſtruction in the Meſſuage aforeſaid with the appurtenances, of houſes, that is to ſay, By throwing downe two Barns, the price of either of them twenty pounds, parcell of the Meſſuage aforeſaid above demiſed, and two houſes called out houſes, the price of each of them eight pounds, in like manner parcell of the Meſſuage aforeſaid, above, as aforeſaid demiſed, and the Timber of the ſame Barnes and houſes ſo thrown downe, taking, burning, and ſelling, to the diſinheritance of him the ſayd *Earle*, and againſt the forme of the proviſion aforeſaid, whereupon he ſaith that he is damnified, and hath damage to the value of one hundred and fifty pounds, and thereupon he brings his ſuite, *&c.*

And the aforeſaid *A.* by *J. D.* his Attorny, comes and defends the force and injury when, *&c.* and whatſoever, &c. And by proteſtation that the aforeſaid two barnes, and two out-houſes, were not parcell of the meſſuage aforeſaid to him the ſayd *A*, by the aforeſaid *Earle* in forme aforeſaid demiſed; by proteſtation alſo, that the ſame Barne or out houſes, were not of ſo much value as the ſaid *Earle* by his Declaration aforeſaid hath above ſuppoſed, for plea he ſaith, that he hath made no waſte, ſale or deſtruction in the Meſſuage aforeſaid, as the aforeſaid *Earle* hath

hath above againſt him declared, and of this he puts himſelfe upon the country, and the aforeſayd *Earle* in like manner. Therefore command is given to the Sherif that he cauſe to come there in eight daies after the purification of the bleſſed *Virgin Mary*, twelve, &c. By whom, &c. And who neither, &c. To recognize, &c. Becauſe as well, &c.

Thus you have a Declaration in waſte, and a Plea pleaded to it, and Iſſue joyned, and this is againſt Tenant for Tearm of yeares: now the Declarations in this Action vary, as to the ſeverall perſons that bring the Action, and the ſeverall perſons againſt whom it is brought.

As where it is brought by the Heire in taile, againſt Tenant for life.

VVhere it is againſt Tenant in Dower, as before you ſaw in the Summons.

Alſo where the Purchaſer of the Reverſion brings it againſt Tenant for yeares.

Alſo it may be brought after a Fine levied; in all which caſes the Declaration muſt vary according to the Cauſe, in all which caſes, as alſo in divers other proceedings of other natures, I refer you to a Book printed in *Eaſter* Term laſt, intitled, Declarations and Pleadings in Engliſh, Collected by *Richard Brownlow Eſq*; which would ſwell this ſmall Tract beyond its intended bigneſſe.

Now, as the Declarations are various, ſo are the Pleas, incident to them, for they may be either generall, or ſpeciall.

The generall Plea is, no waſte made, *&c.*

The ſpeciall Pleas are many, either in way of Juſtification, or excuſe, as the caſe is.

It is a good Plea if the waſte be laid, to be in not repairing, *&c.* That it was repaired before the Action brought, and this muſt be pleaded ſpecially.

But

But to plead it was repaired after the Action brought, it is no good Plea.

It is a good Plea to any waſte, that the Leſſor gave Authority to do it.

It is no good Plea to ſay, that the Plaintiff did covenant to deliver Timber from off the Land, to do it, and refuſed, for the Defendant in this caſe may take it.

It is a good Plea to ſay, the Houſe or Trees were burnt or ſpoyled, by fire, water, or winde, or that the ruine of them, was cauſed by ſome extraordinary Act of God.

It is a good Plea to ſay, that the Houſe fell before the Leaſe, or that it was ſo extraordinary ruinous, and the Timber ſo rotten, as that it would not beare repairing.

It is a good Plea to ſay, that the Leaſe is ſurrendred to the Leſſor, and he hath accepted it.

It is a good Plea that the Plaintiff hath entred upon the Land, and before ſuch his entry, there was no waſte committed.

It is a good Plea to pleade that the Plaintiff hath granted away his Eſtate, and before the grant there was no waſte committed.

If the Plaintiff by good words do effectually releaſe the waſte, this is a good plea.

Where the Leaſe was made without impeachment of waſte, it is a good Plea on the part of the Defendant.

It is no good plea in this action for cutting down Timber, or pulling downe the houſe, that the Leſſor tooke away the Timber or materialls, &c.

It is no good plea, that the Leſſor hath a covenant from the Leſſee not to do waſte.

It is no good plea for the tenant in an action of waſt for cutting of timber, to ſay, that he cut it and keeps

it

it till there ſhall be neede, nor to ſay he cut it generally for neceſſary reparations, unleſſe he ſay withall, that he imployed it to that purpoſe.

And yet it were but reaſon it ſhould be iuſtified to cut it a little before it be uſed, for the drying of it, and making of it otherwiſe uſefull, when an occaſion of uſe is apparantly at hand.

It is a good plea for the Defendant to ſay, that he cut it to make poſts for incloſures, if he can withall preſcribe that there have beene alwayes ſuch incloſures there.

But theſe and many other, may now at the Election of the Defendant be omitted, and by the late Act of 22. *October*, 1650. he may plead not guilty, or ſome ſuch other generall Iſſue may be pleaded, and the ſpeciall matter may be given in Evidence.

Upon theſe or any other Iſſue joyned, and that you intend to go to tryall, the directions that were given before in Partition, Dower, &c. will guide you, both for the making your *Venire Facias*, *Habeas Corpora, and Record*, and likewiſe for your tryall and return of your Poſtea, and entring of Judgment.

In this Action as before you have heard your Judgment is, that the Plaintiff ſhall recover the place waſted and his trebble Damages.

In caſe the Defendant pleads not, but let it go by default or confeſſeth the action, then a Writ of inquiry is awarded, and upon that the Sheriff is to inquire by the oath of twelve Jurors, what damage the Plaintiff hath ſuſtained, which he returnes in an Inquſition, and then the party hath Judgment to recover the Trebble of it, and then hath he as in a Verdict after iudgment entred, a VVrit of ſeizin awarded, which is directed to the Sheriff of the county, where the houſe or lands lye, to give poſſeſſion to the Plaintiff of the place or places waſted, &c.

Warrantia Carta *comes next to be treated of.*

Warrantia Carta is a Writ that lyes for him that is Enfeoffed with Warranty, and is afterwards impleaded in an Aſſize, or other Action, in which he cannot Vouch, then he may have this Writ againſt the Feoffer, or his Heire, to compell them to warrant the ſaid unto them.

The Proceſſe in this Action are Summons in the firſt place, which is as followes.

The Summons in Warrantia Carta.

THE Keepers of the Liberty of *England*, *&c.* Command *A.* that juſtly, *&c* he warrant to *B.* one Meſſuage with the Appurtenances in *D.* which he holdeth and claimeth to hold of him, and whereof he hath his Deed as he ſaith; and unleſſe, *&c.* Or otherwiſe that juſtly, *&c.* he warrant to *B.* the Mannor of *N.* with the Appurtenances, and the Advowſon of the Church of *N.* which he holdeth, *&c.* And whereof he hath his Deed, or the Deeds of *D.* his Father or Mother, or any other of his Anceſtors, whoſe Heire he is, as he ſaith, *&c.*

And although this Writ ſuppoſeth that he holdeth of the Defendant, yet is it not matteriall whether he holdeth of him or no.

And alſo if the Plaintiff hold by Homage *Avaſtrell* of the Defendant any Land, and is impleaded, and hath not any Deed of it, yet he ſhall have this Writ of *Warrantia Carta* againſt the Defendant, and the Writ ſhall ſay (whereof he hath his Deed) and yet he hath not the Deed to ſhew, but only holdeth by Homage

Homage *Anceſtrell*, which imployes a VVarranty, and for this in this caſe, theſe words (whereof he hath his Deed) is not matteriall.

If a man leaſe Land for Tearm of life, rendring a certain Rent, or make a Gift in taile, rendring Rent without Deed, and after the Leſſee, or Donee is impleaded, in ſuch Action where he cannot vouch, then he ſhall have this VVrit of *Warrantia Carta*, againſt the Leſſor, or Donor, or his Heire, who hath the Reverſion; for this Reverſion and Rent reſerved, makes a VVarranty in Law, by the Statue of *Bigamis*, the laſt Chapter, although he had not any Deed of it.

If a man give Land to another in Fee, by Deed, by theſe words (I have given and granted, *&c.*) In this caſe, he ſhall be held to warranty of this Land to the Feoffee, by theſe words, and if the Feoffee be impleaded, he ſhall have a VVrit of *Warrantia Carta* againſt the Feoffor, by theſe words (I have given and granted, *&c.*) but not againſt his Heire, for the Heire ſhall not be bound unto VVarranty by the Deed of the Father, unleſſe he Oblige himſelfe and his Heires to warranty, *&c.* by expreſſe words in the Deed, as to ſay (I and my Heires all the aforeſaid Lands, *&c.* will warrant, *&c.*

Note that he ſhall not have this Action of *Warrantia Carta* againſt the Feoffor, or againſt him againſt whom he hath VVarranty, if he be impleaded in any Action wherein he may vouch him, for then he ought to vouch him to warranty, and if he wil not vouch him in the Action, he ſhall not afterwards have a VVrit of *Warrantia Carta.*

Note that the Vouchee is either to defend the Right againſt the Demandant, or to yeild him other Lands, *&c.* in value, and extendeth to Lands, *&c.* of an Eſtate of Free-hold or Inheritance, and not to

any Chattell, reall, perſonall, or mixt, ſaving only in caſe of a ward-ſhip granted with VVarranty; for in the other caſes concerning Chattels, *&c.* the Voucher ſhall have an Action of Covenant, if he hath a Deed: And an Action of the caſe, or an Action of deceipt, if it be by word of mouth, *&c.*

The Proceſſe whereby the Vouchee is called, is a Summons *Ad Warrantizandum*, and whereupon if the Sheriff returne that the Vouchee is ſummoned, and he maketh default, then there is awarded a *Magnum Cape ad valentiam, &c.*) VVhen if he make default again, then Judgment is given againſt the Tenant, and he to have over in value againſt the Vouchee; but if the Sheriff return that he hath nothing, then after a VVrit of *Alias* and *Plures*, a VVrit of *Sequntur ſub periculo ſuo* is awarded, *&c.* And the Demandant ſhall not have Judgment to recover in value, *&c.* becauſe the Vouchee was never warned.

In the caſe of Homage *Anceſtrell*, which is a ſpecial VVarranty in Law: the Lands that the Lord hath generally at the time of the Voucher, ſhall be lyable to Execution in value, where he hath them by diſcent or purchaſe: But in the caſe of an expreſſe VVarranty, the Heire ſhall be charged but only for ſuch Lands as he had by diſcent from the Anceſtor, which creates the VVarranty.

Note the Lands of the Vouchee ſhall be lyable to warranty, that the Vouchee hath at the time of the Voucher, for that the Voucher is in liew of an Action, and in a *Warrantia Carta*, the Land which the Defendant hath at the time of the VVrit brought, ſhall be lyable to the warranty.

If a man give Lands in Fee with warranty, and bindes certain Lands eſpecially to warranty, the perſon of the Feoffor is hereby bound, and not the Land, unleſſe

unleſſe he had it at the time of the Voucher.

A man may bring his Writ of VVarranty of Charters, &c. in what County he will, if the Deed beare not Date at a certain place or County, for then he ought to bring the VVrit where the Deed beares Date.

But if a man bring a Writ of *Warrantia Carta*, by reaſon of Homage *Auncestrell*, &c. Then he ought to bring the Writ in the County where the Land lyes.

The Summons in this VVrit we have ſhewed you before, upon which VVrit as in the caſe of waſte, the Defendant may eſſoyn, and the Plaintiff adjourn; and for want of an Adiournment of the Plaintiff, the Defendant may enter a Non-ſuite againſt the Plaintiff, provided there were a *Nerecipiatur* firſt entered with the Clark of the Eſſoynes, upon the day of Exception; and then in that caſe the Plaintiff is put to begin again.

After the Summons comes a *Pone*, and then a *Diſtringas*, and if the Defendant appeare not, an *Alias Diſtringas* ſetting Iſſues, *&c.* And ſo Diſtreſſes in *Infinitum*, til there be appearance given.

In Caſe the Defendant do appeare, then you may declare as in the forme following.

The Declaration in Warrantia Carta.

Lincolne, ſſ.

F *A.* was ſummoned to anſwer *H. B.* Clarke, of a Plea; that he warrant to him three Meſuages, &c with the appurtenances in *C.* which he holdeth, and claimeth to hold of him, and whereupon he hath his Deede, &c. and whereupon the ſaid *H* by *J. W.* his Attorny, ſaith, That whereas a certaine Fine was

levied in the court of the Keepers, &c. here, that is to ſay, At *Weſtminſter*, from the day of Saint *Hillary* in fifteene dayes (ſuch a yeare before *O.* St *John* and others, naming them) then Juſtices of the Common Bench here, that is to ſay, at *Weſtminſter* aforeſaid, and other faithfull perſons then being preſent betweene him the ſaid *H. B.* Plaintiff, and the aforeſaid *E.* and one *Joane* then his VVife, and *R. H.* Deforcients of the ſaid three Meſſuages, &c. with the appurtenances, whereof the plea of Covenant was ſummoned betweene them in the ſame Court, that is to ſay, That the aforeſaid *E. I.* and *R.* did acknowledge the aforeſaid Tenemenrs with the appurtenances to be the right of him the ſaid *H. B.* as thoſe which the ſaid *H. B* had of the gift of the aforeſaid *E. J.* and *R*, and the ſame remiſed and quite claimed, from them the ſaid *E. I.* and *R.* and their Heires, to the aforeſaid *H. B.* and his heires for ever, and moreover the ſaid *E.* granted for himſelfe and his Heires that they would warrant the aforeſaid *H.* and his Heirs, the aforeſaid Tenements with the appurtenances againſt all men for ever. By virtue of which fine the ſaid H. *B.* was ſeized of the tenements aforeſaid with the appurtenances in his Demeſne as of Fee, and he the ſaid *H. B.* ſo being thereof ſeized, one *I. D.* arrayed againſt him the ſaid *H.* a certain Aſſiſe of novell diſſeizin of the tenements aforeſaid with the appurtenances, before *P. W.* one of the Juſtices of the Common Bench, and *R. C* one other, &c. Juſtices aſſigned to take the aſſiſes in the County of *L.* aforeſaid, which ſaid Aſſiſe depending, he the ſaid *H.* often reqvired the aforeſaid *E.* that he would warrant to him the tenements aforeſaid with the appurtenances, yet the ſaid *E.* hitherto hath denied to warrant to the ſaide H. the tenements, aforeſaid with

the

the appurtenances, and yet doth deny. VVhereupon he ſaith he is damnified, and hath damage to the value of five hundred pounds, and thereupon he brings his ſuite, *&c.*

The Defendant acknowledgeth the Action.

AND the aforeſaid *E.* by *J. E.* his Attorny, comes, *&c.* and ſaith, that he cannot deny the aforeſaid action of the ſaid H. neither but that the writing aforeſaid is the Deed of him the ſaid *E.* nor but that he did give and grant by that writing to the ſaid *H.* and his Heirs, the tenements aforeſaid with the appurtenances, neither, but that he by that writing is held to warrant to the ſaid H. the tenements aforſaid with the appurtenances in the form in the wch. the ſaid H. hath above declared againſt him: therefore it is conſidered of that the ſaid *E.* ſhall warrant to the ſaid H. the tenements aforſaid with the apurtenances for the place and time, and nothing of being in mercy of him the ſayd H. becaule he came the firſt day by Summons, *&c.*

Here you have a Declaration and Judgment by confeſſion.

NOte if a man recover his warranty in *Warrantia charta*, and after he is impleaded in an action in which he cannot vouch as by aſſize, or by *Scire facias* upon a fine, now it ſeemes that he ought to give notice to him againſt whome he had recovered his warranty of this action, and to pray him to ſhew what plea he will plead to defend the Land.

NOte that a man may bring a writ of *Warrantia Charta* at the Common Law, for warranty made of Lands holden in ancient Demeſne.

Having gone through Warrantia Carta, *We come now to* Audita Querela.

What the Writ *is.*

Audita Querela is a Writ, and lyeth where one is bound in a Statute Merchant, Statute Staple, or Recognizance, or where Judgment is given againſt him for Debt, and his Body in Execution thereupon, then if he have a releaſe, or other matter ſufficient to be diſcharged of Execution, and hath no day in Court there to plead it, then he ſhall have this Writ againſt him that hath ſo recovered, or againſt his Executors.

Againſt whom, and for whom this Writ *is brought.*

THis Writ lyeth for the Party himſelfe againſt whom the Judgment is had, by whom the Statute is made, or his Heire, Executor, or Adminiſtrator, upon whom the charge is come or coming. Sometimes it is to be had againſt the Proſecutor himſelfe, and ſometimes againſt him and others that ought to beare a part of the burthen with him.

It lyes againſt a Ter-Tenant, without naming him Party or Privy.

VVhereſoever this remedy is given, there muſt be theſe three things in the caſe.

1. There muſt be a charge or burthen come, or coming upon him that is to have it.

2. It muſt be ſuch a charge, *&c.* as by Law he ought to be diſcharged of, in part or in whole.

3. It is ſuch a caſe as where he hath no other remedy for his relieſe.

Theſe

Theſe following Caſes will cleare theſe particulars.

If a Judgment, or Judgment and Execution be had againſt one, and the Plaintiff releaſe him of the Debt in Fact, or that he be releaſed of it all, or part of it in law, and yet he ſueth out Execution.

If a Judgment be had againſt me and another, and one of us be taken in Execution, and after are releaſed of the Debt, or diſcharged of the Execution by the Party himſelfe, the other may take advantage of this.

If Judgment be againſt two Treſpaſſors, and one taken, and the damage ſatisfied by him.

The like Caſe if a Judgment be againſt two or more, upon one bond, and Execution is done upon, and ſatisfaction made by one of them.

If Executors ſue for, and recover a Debt, and after the Teſtament is revoked, in this caſe, the Party that hath paid the money, may get the ſame certified by the Biſhop, and then he ſhall have his remedy againſt the Executors.

If the Conuſor after Execution tender the money due upon the Statute, to the Conuſee, and he refuſe it, or if part of it were paid at the day, and he tender the reſt in Court, and yet the Conuſee go on to extend it, in theſe Caſes the Party grieved may have this remedy.

If the Statute were delivered to a Stranger to keep, till certain Conditions were performed, and he doth deliver it to the Conuſee, or he doth get it by fraud from him, before the Conditions be performed, in this caſe he ſhall be releived by this VVrit.

If an Infant enter into a Statute, he may avoid it whilſt he is in his *Minority* by this Writ, and the courſe is this: In caſe he be in Priſon, this Writ may be ſued out by ſome of his Friends to the Juſtices,

who thereupon command the Sheriff to bring the Infant into Court to be ſeen; and if the Judges judge him to be within age, after Proceſſe ſent to the Conuſee, they will diſcharge him. But if one that hath been an Infant, be ſued upon it after he is of full age, this Writ doth not lye for him.

If divers be bound by one ſpecialty (*Coniunctim* and *diviſim*) and the Obligee get Judgment and Execution againſt one of them, and after ſue the Eſpecialty againſt the other, he ſhall have this Writ for his reliefe.

If in the *Interim* betwixt Verdict and Judgment, the parties have put themſelves into Arbitrement for the Suite, or the Defendant get a Releaſe from the Plaintiff, and yet the Plaintiff doth proceed, the Defendant may have this Action; but where theſe Caſes are put, its to be conceived before the Writ brought, that Judgment is given.

Where a man ſues for a thing, for which he had formerly Judgment and Execution, there this Writ lyes.

Where a man and his Heires are bound by any Bond or Bill, *&c.* and the Obligee ſue it and recover againſt the Heires, and after ſue the Executors for the ſame cauſe; or on the other ſide, after recovery had againſt the Executors, he ſue the Heires, here the Heire or Executors ſo ſued may have this remedy, for that he cannot plead it in Bar.

Where a Leſſee covenants for him and his Aſſigns, to repaire Houſes, or to do any other thing chargeable upon him, after Aſſignment of his Eſtate, and he aſſign his Eſtate, and after the Leſſor, who may ſue either of them, ſue and recover againſt one of them; in this caſe, if after he ſue the other for the ſame cauſe, he may have this remedy.

The Proceedings in this Action are as follow.

VVhere

VVhere before Execution this VVrit is brought by the Party grieved himſelfe, or by his Heires or Executors, he ſurmiſing good cauſe for this VVrit, muſt give good Baile to proſecute and ſtand to the Judgment of the Court, upon which he may have a *Superſedeas*, to ſtay Execution; but when the Party is in Priſon, then it ſeems there is no Baile put in, till the Conuſee or Obligee anſwer in the *Audita querela*.

Note that after Execution executed, no *Superſedeas* doth lye.

The Proceſſe before Execution are a *Venire Facias*, and an *Alias*, *&c.* And then if he come not in, the uſe hath been, that upon motion, the Party in Priſon may be diſcharged.

After thoſe Proceſſe a *Diſtringas*, and upon default after appearance, and a Plea pleaded, a *Diſtringas ad audiendum judicium.* for by ſuch default Judgment ſhall be given againſt him, and after Execution, the Proceſſe is a *Scire facias*, when the Party is in Priſon, upon a *Capias ad ſatisfaciend.*

VVhere a man puts in Baile in this Action, he ſhall not be diſcharged of this Baile, but muſt continue till the Suite by the *Audita Querela* be determined, for albeit the Party do not proſecute after the appearance of the Defendant, yet he muſt continue in Priſon, or ſtand upon his Baile.

If a man be Non-ſuited in one *Audita querela*, yet he may have another, but he ſhall have no *Superſedeas* in the ſecond, as he had in the firſt.

Audita querela upon the ſtatute of Uſury.

IT was commanded to the Sheriff, *&c.* VVhereas out of the greivous complaint of *I. B.* of, *&c. R. B.* of, *&c.* And *A. A.* of *&c.* It was ſhewed to the Keepers, *&c.* Complaining, that whereas in the ſtatute in the Parliament held, *&c.* (reciting the Statute of Uſury) as by the ſaid ſtatute more fully appeareth. And wheras one *N. W.* ſuch a day and year at *C.* did lend unto one *R. B.* ninety pounds, for one year then next following, and that in conſideration thereof, it was then and there agreed, between him the ſaid *N. W.* and the aforeſaide *R. B.* that the ſaide *N. W.* ſhould have by way of gaine and profit for deferring and giving day of payment of the aforeſaide ninety poundes, for the time aforeſaide ten poundes, to be paide to the ſaide *N. W.* together with the aforeſaide ninety poundes, and alſo eighteene yardes of black Frizes, of the price of every yarde ſixteene pence, which ſaide *R. B.* afterwards, that is to ſay, ſuch a day and yeare at *C.* aforeſaide, made his Teſtament, and appointed and ordained *Agnes*, the VVife of the aforeſaide *A. A.* and one *T. Bartram*, *I. B.* and *I. B.* his Children, Executors of his Teſtament aforeſaide, and the ſame A. A. and one *W. L.* Gentlemen, Guardians of the aforeſaide *T. B.* ſonne and Heire apparant of the ſaide *R. B.* during the minority of the aforeſaide *T. B.* and afterwards there died, after whole death, that is to ſay, (ſuch a day and yeare, at *C.* aforeſaide) it was agreed betweene him the ſaide *N. W.* and the ſame A. A. and *W. L.* that the aforeſaide *N. W.* ſhould defer and give day of payment of the aforeſaide ninety poundes, of the principall Debt, and of the aforeſaide ten poundes for the Uſe aforeſaide, from the end of the aforeſaide yeare, for the

the payment thereof as aforesaide, before agreed, untill Wednesday next, after the feast of *Easter*, then next following, and that the saide A. A. and *W. L.* or one of them would pay to the saide *N. W.* sixe poundes thirteene shillings and foure pence for gaine and use, for deferring and giving day of payment of the same ninety poundes of principall debt aforesaide, and ten poundes for the first use aforesaide, and also that A. A. and *W: L.* and the aforesaide *T. B:* and *R.* B: should by recognizance acknowledge before *R: M:* then one of the Justices, *&c.* themselves to owe to the aforesaid *N. W.* foure hundred poundes, for the secure payment of the aforesaid ninety poundes of principall debt aforesaid, and ten poundes for the first use aforesaid, and also of the aforesaid sixe poundes thirteene shillings and foure pence for the saide second usury aforesaid, on the aforesaide wednesday next, after the Feast of *Easter*, betweene the houres of one and foure in the afternoone of the same day, which said severall sums in the whole, do amount unto one hundred sixe poundes thirteene shillings and foure pence whereupon the saide *T. B. W. L. R. B.* and A. A. (such a day and yeare aforesaid) at *C.* aforesaid, before the aforesaid *R. M.* did acknowledge themselves to owe to the aforesaid *N. W.* the aforesaide foure hundred pounds for the secure payment of the aforesaid one hundred six poundes, thirteene shillings and foure pence on the aforesaid wednesday next, after the aforesaid Feast of *Easter*, according to the forme and effect of the agreement aforesaid, and so that recognizance in forme aforesaid acknowledged for the payment of the saide ninety pounds of principall debt aforesaid, and of the aforesaid sixteene pounds, thirteen shillings and four pence for the use aforesaid, exceeding the rates of ten pounds for a hundred pounds

pounds by the yeare, by vertue of the ſtatute aforeſaid publiſhed in the Parliament holden, *&c.* is void in the Law; as the ſaid *T. B. R. B.* and A. A. by waies and means convenient, are ready to make appear. Notwithſtanding which the aforeſaid *N. W.* now lately hath unjuſtly proſecuted Execution of the aforeſaid four hundred pounds, by reaſon of the Recognizance aforeſaid in forme aforeſaid acknowledged againſt them the ſaid *T. B. R. B.* and A. A. to the great damage and greivance of them the ſaid *T. B. R. B.* and A. A. whereupon the ſaid T: B. R. B. & A. A. to the Keepers, &c. have ſupplicated to provide for them a fit remedy in this behalf, the ſaid Keepers, beeng willing to do herein that which is juſt, and to exhibit full and ſpeedy Juſtice therein to the ſaid T. B. R. B. and A. A. hath commanded the Juſtices here, that hearing the complaint of them the ſaid T. B. R. B. and A. A. and calling before them the parties aforeſaid in this behalf to be called, and heating their reaſons thereof, they cauſe due and ſpeedy accompliſhment of Juſtice to be done to them the ſaid T. B. R. B. and A. A. as of right, and according to the Law and cuſtome of the common VVealth of *England*, ought to be done, and to that purpoſe, that they ſhould cauſe to come here at this day, that is to ſay (ſuch a returne) the aforeſaid *N. W.* to anſwer in and upon the Premiſes, and further to do that which the Juſtices here ſhall think convenient, and conſider of, and now here at this day (naming the return) came as well the aforeſaid T. B. R. B. and A. A. by VV. B. their Attorny, as the aforeſaid *N. W.* by *L: C.* his Attorny, and hereupon the ſaid T. B. R. B. & A. A. ſay that the aforeſaid *N. W.* (ſuch a day and yeare) lent unto one R. B. ninety pounds for one yeare then next following, and that in conſideration thereof, it was then and there agreed

agreed between him the ſaid *N. W.* and the aforeſaid *T.* that the ſaid *N. W.* ſhould have in gain and profit, *&c.* and ſo go on as before in the Writ, untill you come to void in the Law. And this he is ready to aver, whereupon he prayes Judgment, and that the aforeſaid *N. W.* may be barred from having his Execution aforeſaid, by vertue of the Recognizance and Judgment thereupon in Court here had, and that the ſaid *T. B.* and *A. B.* may be diſcharged thereof, *&c.*

And hereupon the ſaid *N. W.* prayeth liberty to plead, *&c.*

NOte that if a man enter into a Statute or Recognizance, which either is defective in it ſelſe, or is voidable by ſome Law, or becauſe the Contract is uſurious, as in the Declaration before ſpecified; or that there be a Defeazance upon it, which is kept from the Conuſor, or that the Statute is deliverd up by the Conuſee (which is a releaſe in Law) and the Conuſee get it again, and the Conuſee doth go on in the Execution of it. In all theſe caſes, the Party grieved may have this remedy and writ for his reliefe.

If the Statute were made through hard Impriſonment of the Conuſor, he may have this VVrit, *&c.*

NOte *I. W.* brought an *Andita Querela*, upon the Statute of Uſury, to be relieved in making void a Judgment given upon a Bond, where he hath pleaded that it was not his Deed, and it was diſſalowed, and Judgment thereupon as followeth.

AND hereupon the Premiſſes being ſeen, and by the Juſtices here more fully underſtood; it ſeemed to the ſame Juſtices here, that the aforeſaid VVrit

of

of hearing the complaint, and the matter in the ſame contained, was inſufficient in Law to bar the ſaid *R.* from having his Execution aforeſaid, by reaſon of the Recognizance aforeſaid: Therefore it is conſidered of, that the aforeſaid *J. W.* take nothing by his VVrit of hearing the complaint, that the aforeſaid *R.* may proſecute for the Execution, if, &c.

If a man ſue an *Audita querela* upon a Releaſe, and afterwards he is Non-ſuite, he ſhall not have an *Audita querela* upon newmatter, and yet the Law ſeems contrary to this, where it ſayes, he ſhall not delay Execution upon a new *Audita querela*.

If the Conuſor after Execution tender the money due upon the Statute to the Conuſee, and he refuſe it, or if part of it were paid at the day, and he tender the reſt in Court, and yet the Conuſee go on to extend it, in theſe cales the Party grieved may have this remedy.

The Proceſſe, as we told you in *Audita querela*, were *Venire facias*, *Diſtringas*, *Alias* and *Plures*, *Diſtringas*; only take this further, that if the Sheriff return, that he hath nothing, &c. Or that he cannot be found, &c. Then he ſhall have a *Capias* againſt the Defendant.

Curia claudenda. *This is a Writ which lyes at Common Law, and is for Reparation of Fences and Hedges, mounds,* &c.

THis VVrit lyes, where a man ought to incloſe his Soile or Land from his Neighbours, and will not do this, then he may have this VVrit, and it may be ſued before the Sheriff in his County-Court, or

or in the Court of Common Bench. If the VVrit be before the Sheriff, then it runs thus.

THE Keepers, &c. To the Sheriff, &c. That juſtly, &c. he cloſe his feild in *N.* which is open to the nocument of the free-hold of *B.* in the ſame Town, or in another Village, which he ought and was wount to incloſe, as the ſaid *B.* ſayes, and as he is reaſonably able to ſhew that he ought to incloſe it, &c.

If in the Common Bench, then the VVrit is thus.

THE Keepers, &c. Command A. that juſtly, *&c.* he cloſe his Feild in *N.* which is open to the Nocument of the Free-hold of *B.* in *N.* aforeſaid, which he ought and was wont to incloſe, and unleſſe, &c.

This VVrit may be removed out of the County, at the Suite of the Plaintiff, without cauſe.

But if the Defendant will remove it, he ought to ſhew cauſe in the Writ.

And in the Writ to remove it by the Defendant, ſhall be this clauſe (Let Execution of this Writ be made, &c. if the cauſe be true, otherwiſe not.)

This Writ lyes not, unleſſe againſt him who hath the Cloſe next adjoyning unto the Land of the Plaintiff, and lyes not, unleſſe for him who hath an Eſtate of Free-hold in the Land, for Tenant for Tearme of yeares ſhall not have this VVrit.

If a man have a Common in a great waſte, to him and his Heires, or for Tearm of life, and he who hath the Land adjoyning to this waſte, who ought to incloſe betwixt the waſte and his Land, will not make his Incloſure yet the Commoner ſhall not have this Action for the Damage which he hath ſuſtained, &c. Although the Commoner may diſtrain the Beaſts,

Damage

Damage feaſant to the Land, which is his common. For the writ ſuppoſes to the Nocument of the Freehold of the Plaintiff, which proveth that the Plaintif ought to have the Land adioyning, if he will have this action.

The Proceſſes in this action is Summons, Attachment, and Diſtreſſe, *&c.*

The View lies in this Writ.

If the Defendant appeare, and afterwards make default, he ſhall have a *Diſtringas* in Liew of a *Petite cape*, &c. and if he make default at the day of the Return of this writ, he ſhall have a VVrit to inquire of damages, and alſo a Writ to diſtraine to the Reparations.

If the party appear, and that you come to declare, take theſe obſervations.

IN your Declaration you ought to ſhew the certainty of the Land which the Plaintiff hath there adioyning unto the Defendants Land, & the certainty of the Land which the Defendant hath there adioyning, who ought to incloſe, and then you ought to alleadge preſcription to incloſe.

Parco fracto, *Or breaking the Pound comes next to be handled.*

THIS Writ lies, where a man diſtraines the Beaſts of another man doing hurt in his land, or for rent or ſervices behind, and ſends them into the common pound, or into any other pound or place, which may be called a lawfull pound, and he which hath the property of the beaſts, or another

ther perſon take the Beaſts out of the Pound, and driveth them to a place where he pleaſeth; In this caſe, he that diſtraines for Damage done unto him, or for Rent or Services behinde, may have this Writ; wherein he ſhall have Judgment to recover Damages for it, and to diſtrain the Cattell again whereſoever he ſhall finde them.

For this cauſe alſo is the Party offending puniſhable in a Court *Leet*.

If a man com*mand his* Servant to diſtrain for Rent or Services arreare, and the Servant diſtrain the Beaſts, and put them in Pound, *&c.* and a Stranger take them out of the Pound; in this caſe the Maſter and not the Servant ſhall have an Action of *Parto-fracto*, for it it the Pound of the Maſter.

If a man diſtrain for Rent or Services, or for Damage-feaſant, and put the Beaſts in the Soile, or in the Cloſe of his Friend by his licenſe, and he which owes the Beaſts rakes them out of the Cloſe; here he which diſtraines ſhall have this Action, and not he who ought the Cloſe, for he which ought the Cloſe may have his Action, Wherefore he brake his Cloſe, *&c.* For it is not his Pound, but the Pound of him that diſtraineth, *&c.* The form of the Writ is thus.

THE Keepers, *&c.* To the Sheriff of *Lincolne*, greeting, If A. *&c.* Then put, *&c.* B. to ſhew, wherefore whereas he the ſaid A. in his Damage at *N.* certain Cattell, or ſo the Cattell of the aforeſaid *B.* had took, and them according to the Law and Cuſtome of the Common-Wealth of *England*, had there Impounded: The ſame *B.* the aforeſaid Pound by Force and Armes brake, and the Cattell aforeſaid he took and lead away, and other harmes to him he did, to the great Damage, *&c.*

Note here this VVrit is by Force and Arms, and it is not put in the VVrit what manner of Beaſts they

were, nor what number, nor to whom the property of the Beasts are, unlesse at the pleasure of the Plaintiff.

VVhere a man commands his Servant to distrain for Rent or Services, or for Damage-feasant, then the VVrit is thus.

TO shew wherefore whereas he the said A. in his Damage of N. by *B.* his Servant, had caus'd a certain Bull, or certain Cattell to be taken, and the same *B.* the said Bull or Cattell, according to the Law and Custome of the Common-VVealth of *England* had there Impounded: The aforesaid *C.* that Pound by Force and Armes did break, *&c.*

VVhere a man distraines for an Amerciament in a Hundred, and Impounds the Beasts, and the other Party takes them out, the VVrit shall be thus.

WHereas the said A. by *B.* and *C.* his Bailiffs of the Hundred of *N.* certain young Cattell of him the said *F.* at *S.* within the Precinct of the Hundred aforesaid, for a certain Amerciament, to which he the said *F.* was amerced in the same Hundred, to the use of the aforesaid A. to be levied, had caused to be taken, and the same *B.* and *C.* the same young Cattell, *&c.*

Here in this VVrit it ought to be shewed, that the property of the Beasts were in him who was amerced, for that, that he cannot distrain a Strangers Cattell for this Amerciament.

But for Rent or Services arreare, it is otherwise, for there the Party to whom those Rents or Services were arreare, may distrain what Cattell he findes upon the Ground, levant and couchant.

This VVrit lyes, albeit the Impounding be unlawfull, as where the Party that is distrained for Damage feasant,

ſeaſant do offer ſufficient amends after the taking, and before the impounding, and the Party ſo diſtraining doth refuſe it.

The like caſe of one that hath a Replevin, or other colourable Authority (not good in Law) by vertue whereof he gets out the Cattell.

VVhere a man hath a good Authority, and breaks the Pound, before he demand the Cattell of the Keeppers of the Pound, and he do interrupt him in the taking of them; in all theſe caſes the Party grieved may have this VVrit for his remedy.

The Proceſſes in this Action after the Summons, are Attachment, and Diſtreſſe infinite.

Reſcues *we come now to treat of, and the rather for that it hath ſome relation to what we ſpake formerly of.*

THE word Reſcues is two wayes applyable, either to perſons or things.

To Perſons, and that is, when a man is arreſted, and he himſelfe, or another in his behalfe, doth reſcue him.

The other relates to things, and of that we now treat, as having affinity to that of *Parco fracto*, immediately before ſpoken of.

This is a VVrit lying, where one, or his Servan doth diſtrain for Rent-ſervices, or Damage-feaſant or for any other cauſe, and being about to impound the Diſtreſſe, another taketh it away from him, and will not ſuffer him to impound it; in this caſe the Party hurt or grieved may have this VVrit for hi reliefe againſt him that made the reſcue, and ſhall recover Damages for it.

VVhere a man diſtraines Cattell, and in driving

them to the Pound, they get into the Owners house, and he doth withhold them from the distraining, and he will not suffer him to drive them to the Pound, this is a *Rescous* for which this Action lyes.

If a man be coming to distrain, and the Owner drive away the Cattel, and he that is about to distrain doth follow them upon a fresh pursuit, and the Party will not let him have them, but drive them away, in this case he may have this VVrit as his remedy.

But if before one be come in sight, the Owner drive out the Cattell, or they go out themselves, so that he misseth of that Distresse he intended, this VVrit will not lye for this.

If the Lord distrain his very Tenant without cause, and unjustly, and it be rescued, it seems this Action doth lye.

Note that if any other but the Lord do distrain upon his Tenant without cause, or out of time and place, in any of the cases before recited this Action will not lye.

The Processes in this Action are as followes.

The first is a Summons, and then Attachment, and Distringas, *and then* Alias *and* Plures Distringas.

The Writ of Summons is thus.

THE Keepers, &c. To the Sheriff of *L.* &c. If *A.* shall cause the, &c. Then put, &c. To shew wherefore whereas he the said A. in his Damage at *S.* certain Cattell (or thus) The Cattell of the aforesaid *B.* he took, and them according to the Law and Custome of the Common-Wealth of *England*, would have there impounded, The aforesaid *B.* the aforesaid Cattell by Force and Armes he did rescue, &c, And other harmes, &c.

If for Services due, as followes.

The

THe Keepers, *&c:* to the Sheriff, &c, if *A.* ſhall cauſe thee, then put, &c. to ſhew wherefore whereas he the ſaid *A:* in his Fee at *S.* for cuſtomes and ſervices to him due by C. his Servant, certain cattell, he cauſed to be taken and them according to the Law and cuſtome of the Common wealth of *England*, &c.

Note where a man diſtraines beaſts, and dead chattells, there the writ is thus:

To ſhew wherefore, whereas he the ſaid *A.* in his Fee at *S.* for cuſtomes and ſervices to him due, the Cattell and Chattells of him the ſaid *B.* he took, and thoſe Cattell he would have impounded, and the aforeſaid Chattells in the name of diſtreſſe, according to the Law and cuſtome of the Common wealth of *England*, he would have detained, he the ſaid *B.* the ſame Cattell did reſcue, and the Chattells aforeſaid from him the ſaid *A.* he took, and other Harmes, *&c.*

If the party appear not upon the Summons, then as before you are to proceed to Attachment and Diſtreſſe infinite.

In caſe he appeare, you may declare as followes.

York ſſ.

W *C.* lately of *B.* in the County of *E.* yeoman, and *W.* B. lately of B. in the County aforeſaid, were attached to anſwer *I. C.* Knight, of a Plea, that whereas he the ſaid *I.* in his Fee at B. for cuſtomes and ſervices to him due, by *N. T.* his Servant, had cauſed to be taken certain cattell, & the ſame Cattell, according to the Law and cuſtome of the com-

mon-wealth of *England*, would have impounded there the ſaid *W.* and *W.* the ſame Cattell by force and Arms did reſcue, and other Enormities to him they offered, to the great damage of him the ſaid *I.* and againſt the publick peace, *&c.* And whereupon the ſaid *I.* by *I. W.* his Attorny, complaines that whereas he (ſuch a day and yeare) in his fee at B. that is to ſay, in one hundred of acres of land, called *W.* parcell of the Mannor of B. with the appurtenances in the County aforeſaid, which *T.* B. then held of him the ſaid *I.* as of his Mannor of B. in the County aforeſaid, by Homage, fealty, and unto Eſcuage of our Lord the King, of forty ſhillings, when it ſhall happen 2 s., and unto more more, *&c.* And unto leſs leſſe, *&c.* and by the Rent of five and twenty ſhillings, each yeare, at the Feaſt of Saint *Michael the Arch-angell* to be payd, as alſo by the Service of doing ſuit to his Court of *Wapentage* of *H.* in the County aforeſaid, from three weekes to three Weekes, at the *wapentage* aforeſaid to be held, and by the Sheriffgild of five ſhillings every year at the ſame feaſt of Saint *Michael* the Arch-Angell yearly to be paid, of which ſaid ſervices the ſaid *I.* was ſeized by the hands of the aforeſaid *T.* as by the Hands of the true Tenant, that is to ſay, of the Homage, Fealty, and Suit of Court aforeſaid, as of his Fee and righte, and of the Eſcuage and Rent aforeſaid in his demeſne as of Fee; and being ſo ſeized by the aforeſaid *N. T.* his Servant, did cauſe to be taken certain cattell, that is to ſay, two Cowes feeding upon the aforeſaid hundred acres of Land for the Rent, Cuſtomes and Services, to him due and unperformed, that is to ſay, for the Homage, and Fealty, and for the Rent, of five and twenty ſhillings, for one whole yeare, ended at the Feaſt of Saint *Michael* the Arch-Angell (ſuch a year) being in arrear, as al-

ſo

ſo for the Suit of the aforeſaid Court of *Wapentage* held at *H.* aforeſaid (ſuch a day and year) undone, and the ſame *N.* the ſame cattell according to the Law and cuſtome of the Common-Wealth of *England* there would have impounded, they the ſaid *W.* and *W.* the aforeſaid Cattell, the day and year aforeſaid, at *E.* aforeſaid by force and armes, that is to ſay, with Swords, Staves, and Knives, they did reſcue, and other harmes, *&c.* And againſt the Peace, *&c.* Whereupon he ſayes that he is worſted, and hath damage to the value of forty pounds, and thereupon he brings his Suit, *&c.*

AND the aforeſaid *W.* and *W.* by *H. D.* their Attorny comes and defends the force and iniury, when, *&c.* and the aforeſaid *W.* ſaies, that he is in no wiſe guilty of the treſpaſs & reſcue aforeſaid, as the aforeſaid *I. C.* hath above declared againſt him, and of this he puts himſelf upon the country, & the aforeſaid *I. C.* in like manner, and the ſaid *W:* B. as to the coming by force and armes, ſayes, that he is in no wiſe thereof guilty, and upon this he puts himſelf upon the Country, and the aforeſaid *I: C,* in like manner. And as to the reſidue of the treſpas & rescue aforeſaid above ſuppoſed to be done, the ſaid *W:* B. ſayes that the aforeſaid *I. C.* ought not to have againſt him his aforeſaid Action, becauſe he ſayes, that the aforeſaid T. B. held not of the aforeſaid *I. C.* the aforeſaid hundred acres of Land as of his Mannor of B. aforeſaid by the ſervices aforeſaid, as the aforeſaid *I: C.* by his Declaration aforeſaid hath above ſuppoſed, and of this he puts himſelf upon the Country, and the aforeſaid *I. C.* in like manner, therefore as well to the trying this iſſue, as iſſues above ioyned, command is given to the Sheriff that he cauſe to come here 15 days after *Eaſter* twelve, *&c.* by whom, *&c:* And who neither

ther, *&c:* To recognize, *&c.* Becauſe as well, *&c.*

HEre you have a Declaration againſt two, and the one pleadeth generally not guilty, the other not guilty as to force and arms, and as to the reſidue he pleads *Non-Tenure:* upon which you have an Iſſue ioyned in the cauſe, where if you were to diſcend to triall in any of the like nature, your courſe of proceedings muſt be as is formerly directed in other Actions.

In this Action, you recover Damages and Coſts only.

Aſſiſe comes now to be treated of, an action which formerly was much in uſe, and although for the preſent not ſo much in practice, yet to preſerve the knowledge of it, we ſhall here diſcover ſomewhat of the nature of the action, together with the proceedings thereupon.

ASSIZE is a Writ, and it lieth, where a man is put out of his Lands, Tenements, or of any profits to be taken in a certain place, as of an Office, *&c.* and ſo diſſeized of his free hold, (which Freehold to any man is where he is ſeized of Lands or Tenements or profits to be taken in Fee-ſimple, Fee tayl for tearm of his own life, or for Tearm of another mans life) but Tenant by *Elegit*, Tenant by Statute Merchant, Tenant by Statute Staple, may have Aſſize, although they have not freehold, and this directed by divers Statutes.

IN an Aſſize it is alwayes needfull that there be a Diſſeiſor and a Tenant, or otherwiſe the Writ ſhall abate.

Alſo where a man is diſſeized, and recovereth by an Aſſize of Novell diſſeiſin, and afterwards is again diſſeized by the ſame Diſſeiſor, he ſhall have againſt him a Writ of Re-diſſeiſin directed to the Sheriff to make

make inquiſition, and if the Rediſſeiſin be found, he ſhall be ſent to Priſon. Alſo if one recover by an Aſſize of Mortdanceſter, or by other Jury, or default, or by reddition, and if he be another time diſſeized, then he ſhall have a writ, *De poſt diſſeizin*, and he which is taken and impriſoned for Rediſſeizin, ſhall not be delivered without ſpeciall commandement of the King, ſee the ſtatutes thereof, *Merton*, Chapter, the 3. *Marlebridge*, Chapter the 8. and *Weſtminſter*, 2, Chapter the 26.

There is alſo another Aſſize called an Aſſize of Freſh Force, and lieth where a man is diſſeiſed of Tenements, which are deviſable as in the City of *London*, or other Burroughs or townes that be Franchiſes, then the Plaintiff ſhall come into the Court of the ſaid Town and enter his Plaint, and ſhall have a writ directed to the Maior or Bailiffs, and thereupon ſhall paſſe a Jury in the manner of Aſſize of Novell diſſeizin; But it behooveth that he do enter his plaint within forty dayes, as it is ſaid, or otherwiſe he ſhall be ſent to the common Law, and if the Officers delay the Execution, then the Plaintiff ſhall have another writ to have execution, and a *Sicut alias* and a *Plures*.

This Aſſize branches it ſelf further into an, 1. Aſſize of *Darreyn* preſentment, of which wee have before ſpoken of.

2. Aſſize *de Mortdanceſter*.

An Aſſize of *Mortdanceſter* ſhall be brought in like manner, as an Aſſize of Novell diſſeizin ſhall be, and in Aſſize of Novell diſſeizin before the Juſtices of the common Bench, or of the upper Bench, a certain day ſhall be put in there as unto Thurſday after fifteen dayes after *Eaſter*, &c. But in an Aſſize of *Mortdanceſter*, a common day ſhall be given, and fifteen days, *&c.* or in eight days, *&c.*

IN an Aſſize of novell diſſeizin in the Common Bench, or in the upper Bench, the Juſtices may give a day out of Tearm, ſo unto Thurdſay next after ſuch a Feaſt, *&c.* for that that an Aſſize hath not any day of a day of return in the Tearm; but a certain day which the Iuſtices will give him, and this may be as well out of the Tearm as in the Tearm, and that by the ſtatute of *Articuli ſuper chartas*, hich directs that in every Writ of Summons and Attachment, there ought to be fifteen days between the date and the return of it: But in an Aſſize of Novell Diſſeizin in the common Bench, or in the Upper Bench, there; there needs not to be had fifteen dayes between the date and the return of it, as it ſeems by the ſtatute.

In an aſſize of novell diſſeiſin ſued before Juſtices in Eyre, or before Juſtices of the upper bench, or of the common Bench, the Plaintiff need not to have any Patent to the Iuſtices, for they have authority without Patent, and ſo have the Iuſtices of Aſſize authority to take Aſſize of Novell diſſeizin without any patent made unto them, and that by the Statute of *weſtminſter* 2. Chapter the 13.

If the Aſſize be brought in the Upper Bench, or in the Common Bench, then the Writ runs thus.

THE Keepers, *&c.* To the Sheriff, *&c.* Complaint is made to us by *A.* that *B.* unjuſtly and without Judgment, hath diſſeized him of his Free-hold in *C.* after, *&c.* And therefore we command thee, that if the ſaid *A.* ſhal ſecure thee of proſecuting his Complaint, then thou cauſeſt that Tenement to be reſeized of the Cattell which in it were taken, that the Tenement with the Cattell to be in peace

peace untill Saturday, in eight dayes after Saint *Michaell*, or unto Saturday next after the Morrow of All-ſoules next coming, *&c* And in the mean time then cauſe twelve free and lawfull men of that *Viſenage* to ſee that Tenement, and Imbreviate their names, and to ſummon them by good Summoners, that they be before us at *Weſtminſter* (if in the upper Bench) or before our Iuſtices at *Weſtminſter* (if in the Common Bench) at the aforeſaid time ready to make Recognition, and put by Sureties and ſure Pledges, the aforeſaid *B.* or his Baile, if he cannot be found, that he be there to heare that Recognition; and that thou have there the Summoner., the names of the Pledges, and this Writ.

If the Writ be brought before the Iuſtices of Aſſize, then the alteration is thus.

The Writ is all one with the former, vill after the word (Peace) and then you ſay untill the next Aſſizes, when our Juſtices ſhall come into thoſe parts.

If the Writ of Aſſize be brought before other Juſtices then the Juſtices of Aſſize in the ſame County, then the Writ is as above, untill you come to the word (Peace) and then you ſay untill a certain day, which our beloved and faithfull *R.* and *F* ſhall make known unto you, &c. And in the mean time, &c. That thou ſummon them before the aforeſaid *R F.*& thoſe whom we have aſſociated unto them, at a certain place which the ſaid *R.* and *F.* ſhall make known unto thee, ready thereupon to make recognition, &c. And put, &c.

Upon this Writ there ought to be a ſpeciall Patent directed to the ſame Juſtices, for that they are not Juſtices of Aſſize for that County.

If a man have Rent-ſervice, Rent-charge, or a Rent-ſeck, iſſuing out of Land for Tearm of life or

in

in Fee-taile, or Fee-ſimple, if he be diſſeized of this Rent, he ſhall have a Writ of Aſſize of this Rent, and the Writ ſhall be generall, That unjuſtly, &c. he did diſſeize him of his Free-hold in *N.* and he ſhall make his Title to the Rent, *&c.* When he declares, *&c.*

A man may have an Aſſize of divers Rents, or of Land and Rent and Offices and Profits, to be taken in a mans Soile, and all in one Writ.

If a man have any profit granted unto him out of any Land for Tearm of life, or in Fee, as to have the Fruites, whether Apples, Peares, Nutts, or Achorns, or other profit whatſoever, he may have an Aſſize of them, if he be deforced of them.

So likewiſe of a Toll of a Market, of a Paſſage or Ferry, of *Pontage or Pannage*, and other like things, he may have this Writ of Aſſize.

What Seizin is ſufficient to have an Aſſize.

SEizin of parcell of the Rent is ſufficient to have Aſſize of all the Rent.

The Provoſt or Warden of a Colledge ſhall have an Aſſize for Rent, where his Predeceſſor was ſeized, and not he himſelfe,; for the Seizin of the Predeceſſor is the Seizin of the Houſe. The ſame caſe of the Warden of an Hoſpitall.

If a man which hath a Title to enter, ſet his foot upon the Land, and is outed, that is a ſufficient Seizin to have an Aſſize.

If one put in his Beaſts to uſe my Common by my Commandement, this is a ſufficient Seizin for me to have an Aſſize.

Uſing

Uſing of Common by Tenant at will is ſufficient Seizin for him in the Reverſion to have Aſſize of Common, if he or his Tenant at will be diſturbed.

Reverſion was granted to *J. S.* and the Tenant for life, attornes and dyes, and *J. S.* enters by the Windowes (for that he cannot enter by the Door) when one halfe of his Body was in, he was pulled out, and yet that is a ſufficient Seizin to have an Aſſize.

The Proceſſes in this Action are Summons, Attachment, and Diſtreſſe.

Where you are to declare, you may in caſe it be for Common of Paſture, make the inſuing your preſident.

Weſtmerland.

THE Aſſize comes to recognize, whether *T. W.* Knight, unjuſtly and without Judgment, have diſſeized *Henry, Earle* of *Cumberland* of his Common of Paſture in *R.* which pertaines to his Free-hold in *R.* within thirty yeares now laſt paſt, *&c.* And whereupon the ſaid Earle by *H. D.* his Attorney complains, that the aforeſaid *T. W.* hath diſſeized him of his Common of Paſture, to witt, for coming every yeare all times of the yeare, in five hundred Acres of Paſture with the Appurtenances in *R.* aforeſaid, withall Horſes, Oxen, Cowes, Sheep, and Swine, and other Cattell in his Mannor of *R.* in the County of *W.* levant and couchant, which pertain to his freehold in *R.* that is to ſay, to his Mannor aforeſaid.

And for the title of the common paſture aforeſaid and the Aſſize aforeſaid thereupon to be had, the ſaid *Earle* ſaith, that one *H.* lately Earl of *Cumberland*, and Father of him the ſaid now Earl, whoſe heir he is, was ſeized of the Mannor aforeſaid with the appurtenances in his Demeſne as of Fee, and

that

that he the ſaid late Earl, and all they whoſe Eſtate the ſaid late Earl in that Mannor with the appurtenances had from the time, whereof the contrary is not extant to the memory of man, have had and have been accuſtomed to uſe, and have for themſelves, and their Tenants for Tearm of life, years or at will, of their Mannor aforeſaid, and of every parcell thereof common of paſture with all manner of Cattell aforeſaid in the Mannor aforeſaid, Levant and couchant every year, all times of the year, on the aforeſaid five hundred acres of paſture, as unto the Mannor aforeſaid pertaining.

And he the ſaid late Earl of the Mannor aforeſaid, with the appurtenances, being ſo ſeized of ſuch his Eſtate, he died thereof ſeized, after whoſe death the Mannor aforeſaid with the appurtenances, did diſcend to him the ſaid now Earl as to the Son and Heir of the ſaid late Earl, by which he the ſaid now Earl into the Mannor aforeſaid with he appurtenances did enter, and was, and yet is thereof ſeized in his Demeſne as of Fee. And being ſo thereof ſeized, he the ſaid now Earl before the day of the iſſuing forth of the originall writ of Aſſize aforeſaid put his Cattell, that is to ſay two Oxen and two Horſes, into the aforeſaid Mannor, Levant and couchant, on the aforeſaid five hundred acres of paſture to feed upon the graſſe there then growing, uſing thereby his common aforeſaid, and the ſaid Cattell were eating the Graſſe there then growing, untill the aforeſaid *T. W* before the day of the iſſuing forth of the aforeſaid Writ; him the ſaid now Earle of his Common of Paſture aforeſaid, unjuſtly and without Judgment he did diſſeize, as he above againſt him hath complained: And this he is redy to averre, and thereupon he demands the Aſſize.

And

And the aforesaid *T.N.* by *J.P.* his Attorney, comes and saith, that he hath done no Injury or disseizin to the aforesaid now Earle, of the Common of Pasture aforesaid, in the aforesaid five hundred acres of Pasture in view, *&c.* put, and in the plaint aforesaid specified; and upon this he puts himselfe upon the Assize, and the said now Earle in like manner: Therfore the Assize is to be taken thereupon between them.

There are severall Pleas specially to be pleaded in this Action, both in Bar and Abatement, which arise according to the Title on the Defendants part.

A lease for yeares, or for life, the Reversion to the Plaintiff, or a Feoffment of the Plaintiff's, with Warranty, and rely upon the Warranty, is a good Bar.

The Tenant may plead that Partition was made between the Plaintiff and *J. S.* whose Estate he hath, and it is a good Bar.

If the Plaintiff choose one to be his Tenant of all where he is not, the Writ shall abate.

An Assize is brought of Tenements in *D.* and *S.* The Tenant sayes, that all is in *S* that being so, the Writ shall abate, for he cannot abridge the whole Town, but see now by the Statute of 22. *Henry* the eight, Chapter the third, where he may abridge.

The Bailiff may plead *Non-tenure*, or *Misnaming* of the Plaintiff, but not of his Master, and conclude if *&c.*

The Bailiff may plead that the Tenements are in another Town, for that is an Abatement.

The Bailiff may plead *Misnaming*, and *Joyntenancy* without Deed.

A Bailiffe may plead not attached by fifteene dayes.

After adjournment upon the Plea of the Bailiff, the Tenant may plead matter which comes of latter time.

The

The Tenant himſelf, after the Aſſize awarded, may leave his Bar, and plead the generall iſſue; but he cannot plead a new bar after iſſue.

If a plea be pleaded, and the Juſtices dye, all ſhall be pleaded a new; but if they be at iſſue, that ſhall ſtand.

Where they are adjourned upon a Plea in abatement, and after the writ is awarded good, he may afterwards plead in Bar.

Thus much may ſuffice to have ſpoken of Aſſize.

We ſhould now come to treat of divers other actions, as *Contributione facienda*, *Quid Juris clamat*, *Per quæ ſervitia*, *Et per quem reddit.* and divers others of thoſe natures: and finding them to be very obſolete, and out of uſe, and that the Law hath provided remedies, by the foregoing actions in moſt of thoſe caſes, and that the proceedings thereupon (cheifly for the trying of titles) are far more expeditious, and more certain and with leſſe Trouble and danger to the Clyent; I think it wilnot be time ill ſpent, to inſert ſome breife Rules, both in *Ejectione firmæ*, and ſome other actions before ſpoken of, which were then omitted, & hope though they come not in the direct places of thoſe titles, will be very uſefull for the Attorny.

Theſe proceedings are referred to the title foregoing, of this Subiect, Folio, 119.

OF the proceſſe in this Action we have before ſpoken, and of the pleadings and proceedings upon it; but becauſe many of them miſcarry, by reaſon that the proceedings before proceſſe, relating to the Leſſors Entry, the making of the Leaſe, the entrie of the Leſſee, by virtue of the Leaſe, the Ejectors

tors Entry upon him, and his Outer and Ejectment, Where care is not taken, and they be not circumſpect to prevent, a defect in any of theſe, it cauſes much danger and preiudice to the Clyent, and cauſe, and no little diſgrace to the Attorney. In this Action ſo very uſefull we ſhall ſpeake to theſe things in order.

1. The Entry of the Leſſor that hath the right.
2. The Leaſe made by him for tryall of the Title.
3. The Entry of the Leſſee, by vertue of the Leaſe ſo made.
4. The Entry upon him, and his *Ouſter and Ejectment.*

FIrſt it is to be conſidered what Right or Title the Leſſor hath to enter, whether he hath any Right or Title to the Land or no; for if the Right and Title appeare on the Defendants part, the Plaintiffs Action will faile.

Now a man may have a Right or Title to that Land whereof he hath no Poſſeſſion, nor Property; as where land is taken from a man wrongfully by diſſeizin, in this caſe the Challenge or Claim of him from whom it is taken, is called a right. There is a right of Action, which is, where there is no remedy left, but an Action to recover the Land; and there is a right of Entry, when the Party claiming, may for his releiſe, either enter into the Land, or have an Action to receive it.

There is a Title of Entry, which is where no wrong is done, and yet one who hath a lawfull courſe to enter upon the Land which another hath, but hath no Action to recover it; as where entry is given to a man, for a Condition broken upon an Eſcheat, the Tenant dying without Heire.

In all which cases he must make his Entry before he can bring his Action.

1. The Property and Title of Land is made, and may be gained severall wayes.

Either by Entry, as in case of occupation, where Land is granted to *J. S.* for another mans life, and *J. S.* dye; in this case he that first gets into Possession shall have the Estate.

2. By discent, where one hath Land of Inheritance and dyeth, not disposing of it.

3. By Escheat, where the owner dieth seized without any Heire, which may be in case he have only a Bastard, or because he is attainted of Treason or Felony.

4. By conveyance, and so the property of Land is transferred, and so it is passed ten manner of wayes, as follow.

Fine, Recovery, Feoffment, Grant, Lease, Bargain and Sale, Exchange, Surrender, Release, confirmation.

A man may have property in Land also by an Execution, as by *Elegit, or Extent.*

If he ever had a right of Entry into the Land, it must be considered whether it doth continue and be not taken away, for one may have a right of Action, and no right of Entry to recover his Land; and he that will maintain this Action, must make himselfe a Title under the Lessor, that had a right of Entry into the Land when he made the Lease; for he that makes the Lease, must have power and right of Entry at the time of the Lease made, otherwise neither the Entry nor the Lease will be good.

Now that the Entry may be good and warrantable by the Lessor, for otherwise the Action is not maintainable, take these Rules following.

1. This Entry is to be made by the party that hath right.

2. It

2. It is a purposed going into, or setting his foot upon the Land, as upon his own Land.

3. This may be done by the Party himself that hath right to enter, or by his Attorney, by warrant from him, or by another to his use; and if it be done by Attorny, he must have a good Authority, and see he do duly pursue it.

Note that one Joynt-Tenant, Tenant in Common, or Coparcener, having right to enter, may if he will, enter for all the rest.

If such a Person enter generally, or for, or in the name of himself, and the rest; and the rest do not afterwards disagree to it, this is a good Entry for himself and the rest; and therefore if one have Issue, a Son and a Daughter by one Venter, and a Son by another, and being seized of Copy-hold Land, devise all to the younger Son, and dye, and he enter into all this Entry, shall availe the eldest Son, to put him in Possession of the third part.

The entry into one part may be sufficient to gain the Possession of the rest of the Land.

The Entry into parts must be in the name of all, *&c.*

If one restrain his own Entry, and make it speciall, and say, That it shall be to such an Acre only whereon he puts his foot; in this case it reduceth the Possession of no more but that part, *&c.*

If a Lease be made to *A.* and delivered to *B.* to the use of *A.* and *B.* enter to the use of *A.* and after is outed, *A.* may have this Action upon the Entry.

Having done with Entry, we come now to speake of Leases; for it is absolutely requisite for the maintaining of this Action, that a good and warrantable Lease be shewed forth.

For the better inabling of you to make such Lease, take these Rules following.

1. The Leaſe to try the Title muſt be well made, ſealed, and delivered, as other Leaſes and Deeds are done; and for that ſee the Book of Common aſſurance, Chapter the fourth and fourteenth: A Book very uſefull for many Conveyances, both in this and other kindes.

2. The Leaſe and Entry may be made by the Party Leſſor himſelf, if he be of full age, and not a femme Covert, or by his Attorney, by a Letter of Attorney, wherein the Leſſor may ſeale and ſign the Leaſe, and ſeale and deliver the Letter of Attorney at one and the ſame time, to ſome Friend of his; and in this Letter of Attorney he muſt recite the Leaſe, and give the Attorney power to enter into the Land, and there to deliver the Leaſe to the Leſſee as his Deed, and then the Attorney muſt do it in ſuch ſort, as the Leſſor himſelfe ought to do it; and he muſt not deliver it till he come to the Land.

3. The Leaſe muſt be delivered upon the Land, for if the Leſſor ſeale and deliver the Leaſe, before he hath made his Entry upon the Land, it is void.

The Husband and Wife may make a Leaſe and Letter of Attorney, to enter and deliver it upon the Land, and this is good.

A Woman covert, or an Infant, cannot make a Letter of Attorney to ſeale a Leaſe, to try a Title, as a man of full age may do.

The Husband alone may make a Leaſe who is Wives Lands.

A Copy holder may make a Leaſe to try the Title for a yeare without licenſe.

A Tenant in Common may make a Leaſe to try the Title for his parr, *&c.* For a yeare, *&c.*

The uſuall Tract that is uſed in ſealing this Leaſe of Ejectment, is as followes.

Where a man hath a Title to a Houſe, Land, or both,

both, and desires to gain the Possession; it is usuall to make a Lease (to some Friend who is assured will not deceive his trust, but will surrender up the Lease, *&c.*) for two or three yeares or more, for so long as he may be sure the time is not expired, before he get his tryall and Judgment.

This Lease being made, he goes with such his Friend the Lessee, to the Mannor or chiefe House, or stands within the Doore, or to the Land where no house is, where he seales and delivers it to his Friend, and taking the ring or any part of the Doore in his hand, delivers the Lease, mentioning the House and Lands with the Appurtenances, which are contained in the Lease, to his said Friend the Lessee.

This being done, and that you go away, whosoever after that staies in the House, or whosoever next enters into the House, whether Master, Servant, or Stranger, is an Ejector, and is proper to be made Defendant.

In case you finde no Ejector, you may if you so think fit, appoint one to that purpose.

The Lease being sealed and delivered to your Friend as before, the Party appointed to be the Ejector may go into the house, and thereby, you going away, he is become Ejector.

Where you thus appoint an Ejector, you must be sure to give notice to the Tenant of the Land, to defend the Title upon the Ejectors appearance.

Where the Tenant of the Land hath but a Lease, he must give notice to the Lord in whom the Fee-simple is, that he may be ready with his Evidences, *&c.* to defend the Title.

Note that if you cannot come into the House, you may deliver the Lease upon the Lands, in the name of the House and Lands contained in the Lease; and he that comes next after your going away upon the Land, is an Ejector.

Where it cannot be proved that the Leſſee after the Leaſe made, did enter and was poſſeſſed, this Action will not be maintainable, and therefore we muſt now ſay ſomething of the entrie of the Leſſee.

1. He muſt make ſuch an Entry as to gain the Poſſeſſion, for he cannot be ejected out of the Poſſeſſion of that wherein by Law he was never in.

2. His Poſſeſſion muſt continue, for if upon ſealing of the Leaſe, and the delivery of it to the Leſſee upon the Premiſſes, the Leſſor leave him upon the Houſe or Land, and that he be outed, or come away, *&c.* and another enter; whether it be a continuance of the ſame Tenant in Poſſeſſion, or the Entry of a Stranger; here his Poſſeſſion is diſcontinued, and any of thoſe parties are Ejectors. For the Ejectors take this.

The Entry of a man upon the Land after the Leaſe ſealed, or the putting in a Beaſt upon the Land, in the like caſe is an Ejectment.

The continuance of the ſame Tenant in Poſſeſſion, that was in at the time of the ſealing of the Leaſe, is an Ejectment, and the Tenant an Ejector.

Where a Leaſe is made to try the Title, and the Servants of the former Poſſeſſor enter with their Maſters Carts to do their utmoſt, and the Action is brought again the Maſter; It is maintainable without proofe of the Maſters Commandement for this Entry.

In ſome caſes this Writ lyes, and not in others.

It lyes of a Mannor Houſe, Land, Meadow, Paſture, Tyth, or ſuch like things.

It lyes of an Orchard: It lyeth of a Kitchin: It lyeth of a Cambet: It lyeth alſo of a Coale-Mine: It lyeth alſo of a Bailery.

It lyeth not upon a Leaſe of a Stock of Cattell, nor

nor upon a Leaſe of a Sum of Money, nor of a water courſe.

The writ muſt ſet forth the certainty of the thing both for quantity and quality, as ſo many Meſſuages, ſo many Cottages, ſo many acres of Land, ſo many acres of Meadow, ſo many acres of Paſture, *&c.*

Thus much for *Ejectione firme*, before omitted.

In Actions of Account, take theſe Obſervations following.

NOte where a Bailiff doth make a Deputy, yet the Writ muſt be againſt the Bailiff himſelfe.

If a Stranger take the Profit of my Wives Land during Marriage, and I dye; my Executor, and not my Wife ſhall have this Action.

This Action lyes againſt the Husband for the receit of his Wife, and againſt the Wife and Husband for the receit of the VVife, whilſt ſhe was ſole.

It lyes againſt a Body politick, as againſt a ſingle man.

It lyes againſt the Keeper of a Park, that hath the charge of Deere, as Bailiff of his Park, *&c.*

An Action of account lyes not in theſe caſes following.

1. VVhere the party to be ſued claimeth the thing to his own uſe.

2. VVhere there is no privity between the parties, neither *Ex proviſione Legis*, called privity in Law, as in the caſe of a Guardian, nor in Deed by the conſent of the Party; as when Goods are delivered to a Stranger, and not to my uſe, or to be delivered over to more, there is no agreement between the parties.

3. VVhen he that hath delivered the things, hath taken an Obligation for ſecurity of the things delivered.

4. Where the Party that hath the things, hath a bare overſight of them, as a Bailiff of a Plow, a Shepheard of ſheep, &c.

A Bailiff ſhall have allowance upon his Accounts, but a Receiver ſhall have none.

If the Bailiff diſburſe any thing for his Maſter belonging to his Office, as to pay his quit Rent, or the like; or if he be robbed or ſuffer loſſe by other means, without any default in him, it ſhall be allowed him upon his account: But if he pay his Maſters Debts, or lay out any thing elſe not appertaining to his Office, this will not be allowed him.

There are two Judgments upon this VVrit, the firſt is (*Quod computet*) which is *Interlocutory*, the laſt is, *Quod querens recuperet verſus Defendentem*, ſo much as he is found in Arrerages, and *Damna occaſione interplacitationis*.

The firſt is to account only, and upon this the Defendant may be outlawed, and then before Outlawry, if he appeare and enter into account, and be found in Arrerages, the Plaintiff ſhall have a definitive Judgment for the Arrerages, and after the firſt Judgment, no abatement can be for any cauſe, but a diſcontinuance, or Non-ſuit may be.

The firſt Judgment is but an Award of the Court, like to a VVrit of inquiry of Damages, and not like to a ſmall Judgment, for there the Action is clearly determined, and theſe two Judgments depend one upon another, for if Judgment be to account, and the Plaintiff dye before he hath accounted, the Executor cannot go on in that Suit, but he muſt begin again; and no VVrit of Errour will be upon the firſt, till after the ſecond Judgment.

VVe have now gone through the moſt generall and uſefull practiſe of the Common Bench, relating to the ſeverall Actions before going; as alſo of all Offices

ſices, and Officers incident to that Court, and now as before we promiſed hereto is added a Table of the Fees of that Court, of all Offices whatſoever, relating to the Court, or the practiſe of it, belonging to every Office and Officer, which follow in order.

The Fees here under mentioned are the Fees due & paid to the Lord chief Juſtice, and the other Juſtices of the Court of common Pleas at Weſtminſter, as they were due, and uſually paid to the Juſtice of the ſame Court.

The Lord cheif Juſtice his Fees.

FOr allowance of a Writ of Error upon an Outlawry before Judgement, 20 *s.* *Writ of errour.*

For a Baile taken upon an Outlary upon meane proceſſe in debt, if the debt be 20 *l.* or above, 2 *s.* 4 *d.*

For the allowance of a VVrit of *Error* upon a Judgment, 20 *s.*

For Baile taken in caſe of debt after Judgement, 12 *s.*

For the allowance of a VVrit of *Error* upon a Judgment upon a *Scire fac.* and Outlary after Judgment, 35 *s.*

For making the Roll that a VVrit of *Error* is allowed on, 2 *s.* *Making the roll.*

For a *Superſed.* 3 *s.* *Superſed.*

For the tranſcript of a Record being a preſſe, 6 *s.* 8 *d.* *Tranſcript.*

For every preſſe more, 6 *s.* 8 *d.*

Certiorari. For the return of every *Certiorari*, 14 *s.* 9 *d.*

Seale Niſi prius. For the ſeale of every Record of *Niſi prius*, 2 *s.* 1 *d.*

Sealing of writs. For the ſeale of every VVrit ſealed in Court, 1 *d.*

and exemplifica. For the ſeale of every Exemplification, 2 *d.*

Fines.

The Fees following are due to ſuch of the Judges who do perform the buſineſs.

FOr acknowledging of a Fine or Warrant of Attorney for a common Recovery out of Court, 6 *s.* 8 *d.*

Signe writs. For ſigning every writ of priviledge to remove any cauſe, *Habeas corpus*, *procedendo*, or *Superſed.* upon a *Procedendo*, 4 *s.*

Bailes. For every Baile taken out of Court upon any ſuch VVrit of priviledge, wherein one cauſe only is returned, 9 *s.* 8 *d.*

For every cauſe more; 2 *s.*

Confeſſions. For the confeſſion of a Judgment out of Court, 9 *s.* 8 *d.*

Bayles. For every Phillizers Bail, and other Baile taken out of Court, 9 *s.* 8 *d.*

Satisfaction. For acknowledging ſatisfaction out of Court, 9 *s.* 8 *d.*

Deeds acknow. For acknowledging out of Court a Deed to be inrolled, 9 *s.* 8 *d.*

Guardians. For admiſſion of a Guardian out of Court, 9 *s.* 8 *d.*

Suggeſtion. For the proof of a ſuggeſtion out of Court

Court, for every witneſſe, 9 *s.* 8 *d*

For a warrant for paſſing of a Fine, where there are more than three Cognizors, or three Cognizees, parties to the Fine, 4 *s.* *Warrant for fine*

For every Affidavit taken out of Court upon a forraign Plea, or Reſcous, 2 *s.* *Affidavit.*

For any other Affidavit taken out o-Court, 8 *d.*

For exhibiting of an Information out court, 8 d *Informations.*

For ſigning a Bill of coſts to award an Attachment for not appearing upon a *Subpoena*, 8 *d.*

For granting a licence to compound upon a penall law, 2 s

For aſſeſſing of the Kings part of a forfeiture upon a penall Statute after compoſition with the Informer, 2 *s.*

For the commitment out of Court of a Priſoner to the fleet, charged with one cauſe only, 9 s 8 d. *Commitments.*

For every baile taken out of Court upon an Outlary in debt upon meane proces reverſed, if the ſame be twenty pounds, 2 s. 4 d. *Bailes on Outlaries*

Divident

Divident Fees.

Fees in court to the Box

These fees following are due to the Lord cheif Justice, and the other Judges of the court of common Pleas, by way of Divident.

Iudgments.
Satisfaction.

FOr confessing of a Judgment in Court. 6 d

For acknowledging satisfaction in Court, if the Debt or Damage do not amount unto 100 l. 6 d

If the Debt or damage do amount to 100 l. 12 d. and for every 100 l. after the same rate, 12 d

Guardian.

For admitting an Infant in Court to his Guardian, 12 d

Ult.

For reversing an Outlary in Court for Error in the Exigent, or Retourn, 12 d

For the like for the insufficiency of the Proclamation, or Retourn, or for want of a Proclamation, 2 s

Recoveries.

For every common Recovery acknowledged in Court, 6 d

Fines.

For a Fine acknowledged in Court, 6 d

Bailes.
Recognizance.

For a Bail taken in Court, or a Bail or recognizance ackowledged in court, 12 d

Deeds.

For a Deed acknowledged in Court to be inrolled, 12 d

Discontinuances.

For a Discontinuance, 12 d

Prohibition.

For a prohibition granted, 9s 8 d

For

For every wager of Law, or nonſuit upon a wager of Law, 6 d — *Wagers of Law.*

For admiſſion of an Attorny to be an Attorny of this Court, 20 s — *Return ſworn.*

The Puiſne Judges Fees.

FOr every fine drawn at Bar, 12 d — *Fines.*

For a Recovery drawn at the Bar with a ſingle voucher, 18 d — *Recoveries.*

For every voucher more, 6 d

For Reverſall of an outlary in court 4 s — *Reverſalls.*

For taking a privy verdict 6 s 8 d — *Privy verdict.*

For taxing of coſts upon every verdict. 12 d — *Coſts taxed.*

From the Clark of the Warrants every Terme, to every of the puiſne Judges, 33 s — *Feod annuale. Clericus Warr.*

For every Attorny, whoſe name is recorded in the Roll of Attornies every Terme. 4 d — *Rot. Attou.*

For inrolling and examining the parts of a Fine, and Writs upon common Recoveries by the Statute, 23. *Eliz.* 6 s — *Inrolling fines & recoveries.*

For the Exemplification and examination of the parts of a Fine, and Writs upon common recoveries by that Statute, 5 s — *Exemplification thereof.*

For drawing and entring a Rule for and amendment upon that Stat. 12 d — *Rules for amendments.*

For a ſearch made upon the inrolment upon that Statute 4 d — *Searches.*

For a coppy of a Fine, or writs inrolled — *Copies.*

rolled upon common Recoveries inrolled by that Stat. for every sheet, 4 d

Return of writs of covenant and entries.

For the return of every Writ of Covenant brought to levy a fine upon, 10 d

For the return of every Writ of entry to suffer a common recovery, every writ of Summons and Seizin thereupon, 10 d

Signing ded. potestatem.

An ancient fee of 6 s 8 d for signing of a *Dedimus potestatem*, due to the Judges of any court who do assign the same, which is now, and of late hath been divided amongst all the Judges that ride the circuits.

These fees following are due to the Clarks of the Lord cheife Justice, and other the Justices of the said court.

Fines.

TO the Iudges clark of the fines, For taking of a Fine, or warrant of Attorny, 35.4 d.

Warrants of Attornyes.

For certifying of a Fine, or return of a *Dedimus potestatem*, 16 d

Bayles.

To the Judges Clark of Bailes, for taking every bail, 12 d

Caveat.

For entring every caveat to give notice that good Bail may be taken, 12 d.

Satisfacti.

For satisfaction acknowledged out of Court, 12 d

Deeds acknowledged.

For a Deed acknowledged out of Court to be inrolled. 12 d

Suggestion.

For the proof of a suggestion out of court for every witness, 12 d

Affidavits.

For an Affidavit taken out of court, 6 d

For

Information.

For entring into his booke an Information exhibited out of Court, 4 d

For entring into his Booke of costs a VVarrant signed to award an attachment for not appearing upon a *Sub pœna*, 4 d

Guardian Licences.

For Admission to a Guardian, 12 d

For entring into his booke a licence to compound upon a penall Law, 4 d

For entring into his book the Kings part of the forfeiture upon a penall law assessed by the Judges, after composition with the Informer, 6 d

Commitments.

For entring into a Booke a commitment out of Court of a prisoner to the Fleet, charged with one cause only, 12 d

Inrolements.

To the puisne Judges clark of the Inrollments, for copying, inrolling, and examining the parts of a *Fine*, and writs upon a Recovery, by the statute, 23 *Eliz.* 8 s 4 d

Fines and recoveries, &c.

For a search made for an inrollment upon that Stat. 8 d

For writing a fine, or writs inrolled upon a common Recovery inrolled by that Stat. 8 d

The

The Cuſtos brevium, who is the prime and firſt Officer of the Court, his fees.

Theſe Fees following are the Fees which are taken by the Cuſtos Brevium *of his Maieſties Court of Common Pleas, and his Clarks in right of his ſaid Office, and as they were taken* 11. Eliz. *by the then Maſter of the ſaid Office, and his Clarks.*

Pt. diem. *Inprimis* for filing any Writ, or other Record, coming after the day of the retourne thereof, except Writs of priviledge *de veniendo, & reduendo*, and alſo Writs of priviledge, called *prop.* or *poſt diem.* 4 d.

Pt. Ter. *Item*, For filing any Writ, or other Record (except before excepted) comming after the Terme wherein it was retournable, called a *poſt Term.* 20 d.

Item, For filing any Writ, or other Record coming after two Termes, called *poſt Termin.* for every Term after 20 d. a peice, except Exigents, and Outlawries, which pay but only 20. d.

Item, To the Clarke of the ſame Office (*ab antiquo*) who enters the ſame, 2 d

Item, Upon the making of the Stat. 4 *H.* 7 *cap.* 24. the *Cuſtos Brevium* was allowed

allowed by the Court for carrying, and recarrying of every Fine levied according to that Statute, to *Weſtmin.* to the Cirographer to proclaim foure Termes. 8 d.

Item, For keeping three parts of the Record of every Fine, conſiſting of five parts, 4 d. a peice, 12 d.

In tot. For every Fine 3 s 8 d. wherof the Maſter hath 2 s 6. and 14 d. is allowed to the Clarks, 3 s 8 d.

Item, For the amendment of every Writ or other Record *Per Warrant. Cur.* 20 d. *Amendments.*

Item, For every *Non eſt factum* pleaded in Court, 2 s *Non eſt factum.*

Item, For every Sheriffs bundle of Writs retournable of the precedent Terme, and coming before Eſſoine day of the ſecond retourne of the new Terme, 8 d. *Sheriffs bundle.*

The uſuall Fees allowed by the Cuſtos Brevium to the Clarks of his Office.

Inprimis, For every Temple ſearch, 4 d. *Searches.*

Item, Out of every *Weſtminſter*-ſearch, 2 s 1 d.

Item, To the Clarks out of the allowance of every *Certiorari* 2 s 8 d. and for certifying the ſame, *ſecundum longitudinem*, and according to reaſon, 2 s. 8 d. *Certiorari.*

Item, To the Clark for writing and examining of every Exemplification, *Exemplifica.*

Porta. bri. in cur. *ſecundum longitudinem.*

Item, To the Clarke for any Writ, or other Record carryed into the Court, 4 d.

Bre. de Ingrum. & ſeia. *Item*, For entring a common Recovery Writ *ſuper diſſeiſinam in le poſt*, 8 d.

Fines. *Item*, For every Fine paſſing in the Office, 14 d.

Ne recipiatur. *Item*, For entring into a Book every *Recipiatur* comming under a Judges hand, or by order of Court, 12 d.

Nota Jur. *Item*, For every Note of *Jurors* names for the Clark of the Juries to make further Proces by, 4 d.

Copia exſa. *Item*, For every Note of an Exigent for the Clark of the Outlawries to make further Proces by, 8 d.

Searches. *Item*, For the ſearch of any Booke of Entries of any VVrits for every Terme, 8 d.

Copies. *Item*, For the Copy of any VVrit, or other Record, for every ſheet, 8 d.

The uſuall Fees allowed by the Cuſtos Brevium, *to the Bag-bearer of the Office, being alwayes the common Vouchee of the Court.*

Searches. *Inprimis*, for every ſearch under five yeares, 1 d.

Item, For every Temple ſearch, 5 d.

For every *Weſtm.* ſearch, 12 d.

Porta. bre. in cur. For any VVrit, or other Record carried into the Court, 5 d.

Recupat. For every common Recovery ſuffered in Court (being the common Vouchee)

chee, 4 d. a peice, 4 d.

For every Attorney ſworn in Court, 6 d. *Attourn. Jur.*

The Fees of the Clark of the Inrolements, of Warrants, and Eſtreats, in the common Pleas, as are now, and have been taken theſe two and thirty yeares, and as I conceive were taken ever ſince 31. Eliz. *ſaving the Fees hereafter mentioned, allowed* per ordin. Cur.

EVery Inrolement containing a ſide of a Roll, 5 s. *Inrolements.*

For a full Roll, 10 s

And ſo according to the rate.

Every Warrant of Attorney *in deb. tranſgr. & detinue.* 4 d. *War. Attorn.*

The Sheriffs warrants, 12 d.

Every other warrant, called double warrants, 8 d.

For a *Poſt Termin.* 4 d.

The Lord Mayor of *London* his warrant, 5 s 8 d.

The Secondaries of the Compters in Eaſter Term yearely, 13 4.

For entring of an Attornies name in the Roll of Attornies, upon his firſt admittance. 3 s 4 d. *Attorn. Jur.*

For a warrant upon a writ of Covenant, *per ordin. Cur.* 4 d *War. ſur fine.*

Paid to the Clarke by every Attorney 4 d. a Terme, called the Roll groat, which is paid to the Judges Box, and I conceive it to be due ever ſince *Rot. Attorn.*

11. *Eliz.* 4 d.

Recuperat. Paid also to the Clark by the Prothonotaries 12 d. upon every Recovery, which is also paid to the Judges, 12 d.

Attorn. Jur. To the Clark when an Attorney is first sworn. 12

The Cirographers Fees.

Fines. IN *primis*, The ancient Fee limited by Stat. 11. *Eliz.* for every Fine, 4 s.

Item, From 4. *H.* 7. for the service in proclaiming Fines, 8 d.

Item, By Stat. 23. *Eliz.* for writing the Roll, 4 d.

So the Cirographers Fee for every Fine is 5 s.

Other Fees also due, and anciently paid to the Cirographer, videlicet.

Exemplificat. FOR exemplifying a Fine the Term in which it was ingrossed, 2 s 8 d.

Copie. For every sheet of every Fine, of twelve lines copied out of the Record, 12 d.

For the sight of every Record being ancient, from *H.* 8. upwards. 3 s 4 d.

Searches. For the search of every Fine from *H.* 8. to this present, for every yeare, 8 d.

For the search of every Fine during the

the Raign of H. 8. for every year 12 d

For certifying of every Record by a Writ of Errour, 12 s — *Certiora.*

For a *Quid iuris clamat, quem redditum, reddit, & per quæ servic.* 6 s — *Quid iur. clam &c.*

For entring a claime upon a Record, 5 s — *Claymes,*

For allowing of Proclamations upon Fines brought into the Office after the Tearm ended, 6 d — *Pt. fines.*

For the *Post Termin.* of a fine 12 d — *Pt. Terminum.*

The Cirographers Clarkes Fees for ingrossing of Fines by the Attornie which sue them out.

THe Cirographers Clarkes have received an allowance of the Attorneys for their paines for them, which heretofore have been more advantageous unto them than now it is, being reduced to 2 s. 6 d. in certaine, had and made at the request of 100. or 80. of the most ancient Attorneys, with *John Brewer*, Esquire, Clark of the said Office, in 2. or 3. of King *James*: To which agreement had and made in writing, the said Attorneys set to their hands, and the same was delivered to Sir *Edward Cooke*, Knight, then chiefe Justice of the common Pleas, and hath so continued ever since, 2 s. 6 d. — *Fines ingros.*

For this allowance the Clarkes doe write more then all the officers through which Fines do passe, *viz.* They write every Fine long or short, foure times o-

ver in a great set hand.

Fees belonging to the Clarke of the Treasury.

Copie. FOr the copy of every issue, and imparlance for every sheet, 4 *d.*

For every Judgement, Deed enrolled, and reall Action, for every sheet, 8 d

Searches. For the search of every Terme above ten years, 4 *s.*

Exemplification. For every Exemplification not exceeding three sheets, 7 *s.*

For every sheet more, 12 d.

Records of Nisi prius. For every Record of *Nisi prius*, not exceeding three sheets, 2 *s*

For every sheet more, 4 *d.*

Fees for the Keeper of the Treasury from 11. Eliz.

Searches. IN *primis*, for search of a Tearm above ten year, 8 d

For seven yeares under ten yeares, 4 d

For three yeares, 0

For search of a Plea Roll. 4 d

Portam Rot. For a roll carried into the Court, 6 d

Ligam. Rot. For making up a tearm and record 3 s

For every Attorny sworn in court, 12 s

Attourn. iur. For a Jury at bar, 5 s

Jur. at Bar. For a *Nisi prius*, in Mid. 2 s

Nisi prius mid. For a Wager in Law, 5 d

Gager delay.

For

For a copy of a *Precipe*, after the Tearm, 18 d — *Copia per fines.*

For a fine acknowledged in the treasury, 4 d

For a warrant of Attorny left unentred, and comes to be entred in the roll after the Term, 4 d.

For an entry left out of the Kings silver, and comes to be entred in the Office, 4 d — *Intr. p. Termi.*

From the Clark of the Treasury for my attendance every Tearm, 5 s — *Feod. anuale.*

For my key after the tearm. 18 d — *Claves Thes.*

The Fees of the Clarke of the Kings silver, as they were taken in the Eleventh yeare of Queene Elizabeth, *in the sixteenth yeare of King* James, *and in the late Kings time, and since.*

Inprimis, For the Fees of every ordinary Fine taken by the Lord cheife Justice of the common Pleas, or any Iudge of Assize in the VVestern circuit, together with the copy, or *Post fine*, 18 d — *Fines in the western circuit*

For every fine taken in the same Circuit by speciall commission, and for the copy of the *Post fine*, 22 d — *Fines by speciall Deed.*

For every ordinary fine elsewhere in England, and Munmouthshire taken as aforesaid without Commission, and for the copy, 10 d — *Ordinary fines*

Weſtern. For every fine taken by ſpeciall Commiſſion out of the weſtern circuit, and for the copy, 14 d

Severall capti. For every ſeverall caption in any fine where it is taken at ſeverall times by ſpeciall commiſſion, over and above the former rates, 4 d

Certiora. For every fine certified by *certiorari* after the death of any Iudge, or other Commiſſioners, over and above the former rates, 6 d

Pt. Termi. For the *Poſt Termin.* of every fine brought in the next Vacation after the retourn of the writ of Covenant, 6 d

Searches. For every Search of any fine every Term 4 d

Copia. For every copy of the Entry of the Kings ſilver, 8 d

Ne recipiatur. For every fee of a *Ne recipiatur*, of any fine either by order or warrant of the court, or any Iudge 3 s. 4 d.

For the continuing of any ſuch order or warrant from term to term till it be diſſolved, 3 s 4 d

Te Philizers Fees.

Cap. al. & plur. IN*primis*, For every Cap. Al. & Plur. Cap. in Debt, Detinue, and Treſpaſſe, not having more than foure names: in a Writ, and Entry thereof, 6 d

Delivery of Record of the cap. *Item*, for delivery of every firſt Cap. upon Record and Entry thereof, 4 d

Teſtat. For every *Teſtat.* upon any of the

Pone ſum. ſaid writs, *Pon. in Replevin & Summons*, 12 d

12 d — *Bria. in compo.*

Item, for every *Cap. Al. & Plur.* in Accompt, Covenant, Annuity, *Electione firme*, and upon penall Stat. 12d

Item, for every writ in an action upon the case, or more, according to the length, 12d — *Actions super casum.*

For every return *Habend.* and second deliverance, and entry thereof, 2s 6d — *Return Habend.*

For every *Non. omit. & cap.* in VVithernam, 2s — *Non omit. Withernam.*

For every VVrit of partition *Warrant charte*, *Quare imp.*. and VVaste, 12d — *Partition waste Quare impedit: War. Cart.*

For every writ for inquiry of damages in reall actions, *Scirefac. & Superſed*, 2s — *Inqui. de dam. Scire fac. Superſe. Gr. & pet. cap. Copia inde.*

For every grand *Cap. Al. Sum. pet. cap.* and entry thereof, 2s 6d

For the copy of the entry thereof, 8d

For the demand in every writ of view and entry thereof. 2s 6d — *View.*

For every writ of Seizin and entry thereof, 4s 6d — *Seizin.*

For the view prayer, 2s

For a copy of the entry thereof, 8d

For every writ of *Habeas corpus, duc. coram; diſtring. nuper. vic. et diſtring. ballivum.* 2s — *Habeas corp. & diſtring. Adiournmenc.*

For every writ of reſcous and entry thereof, 2s — *cont reſort. Reſcous.*

For the entry of every adjournment, diſcontinuance, and reſort, 4d — *Speciall baile.*

For every ſpeciall bail, and the entry there-

thereof, 2 s 10 d

For every appearance in reall and mixt actions, 4 d

Apparance. For every apparance upon writs to arreſt, and the Entry thereof, 12 d

Searches, rules, copies, number, Roles. For ſearches, copies, number, rolls, and giving of Rules, each of them, 4 d.

Exigenters Fees.

Feod Exigenters. EVer ſince the Statute of *Henry the eighth*, which gave the Proclamation upon the exigent, the whole Eſtate of the Exigenters Office did conſiſt in the making of three writs, *Videlicet*, An Exigent, a *Superſed.* and a Proclamation, All which writs are warranted by one and the same record.

For all the time of our remembrance and experience in the ſaid court, which hath beene (by the moſt ancient of us) for about thirty years or thereabout, the fees of the ſaid writs were as followeth, *Videlicet*, 2 s

The Superſed. 11 d

The Exigent,

The Proclamation. 6 d

VVhich fee of 6 d was given by the Statute of 6. *Henry the eighth*, being now about one hundred and ten yeares ſince.

About eight or nine yeares ſince the Superſed. (*quia improvid.*) being the leaſt

leaſt Writ in labour, and more in profit then both the other, was granted by Letters Patents under the great Seale of England, by the late King of famous memory, to Maſter *John Murray*, then of his maieſties bed hamber, and partly to avoid conteſtation with his ſaid Majeſties grant, and upon hopes and promiſes of ſome recompence other way, the Exigenters did give way to the ſaid Patent, and have ever ſince loſt the benefit of the ſaid Snperſed. whereupon the Judges did give increaſe only of a 1 d to be taken upon the Exigent, for releif of the Exigenters & their Clarks,& ſo the Exigent was made 12 d: which increaſe of 1 d is all the recompence which hitherto they have received for that great loſs of the Superſed.

We have likewiſe heard, that above forty years ſince, and before our times by occaſion of an Act of Parliament, made 31. *Eliz.* whereby the Proclamation of the Exigent was much inlarged without any addition or increaſe of Fee, there was one peny added to the Exigent to be given to the poor Clarks for writing the ſaid writs, over and above the ancient allowance; which peny hath ever ſince beene paid to the ſaid poor Clarks accordingly, without any benefit to the Maſters themſelves.

Other increaſe, addition, or alteration of fees in our Offices we know not

of,

of, nor ever heard of, although the length of the said Exigent, or Proclamation with their entries, consideringe the losse of the *Supersed.* (all which we humbly submit to his Majesties Commissioners) might perhaps have justly deserved some further improvement. And it is certainly true, that no other increase of fees hath been in our Officers since 11 *Eliz.* nor for ought we ever heard, or can by any meanes coniecture, for these hundred yeares at the least.

HILLAR. TERTIO *Caroli Regis.*

The Clarke of the Jurors.

A Note of all such Fees as are now usually taken by the Clarkes of the Jurors of his Maiesties Court of common Pleas at VVestmin. *being the same, and no other then such as have been taken time out of minde.*

Habeas Corpus. Jurator. IN*primis*, For a writ of *Habeas Corpus*, in debt and trespasse, 10 d.
For the like VVrit in all other Actions, 16 d.

Distring. For a *Distringas cum decem Tales*, 2s 4 d.

Search copy. For a Termes search, the copy of a Iury

Jury; a number Roll, and a diſcontinuance and adjournment for every of them, 4 d. *Court adiourn.*

The Clarke of the Eſſoynes.

Inprimis, For every Eſſoyn and exception, 4 d. *Eſſoine except.*
For the copy, 4 d. *Copia.*
For every adjournment, 4 d. *Adiournment.*
For the copy, 2 d. *Copies.*
For every *Idem dies*, 4d. *Idem dies.*
For every Non-ſuite for want of adiournment in Actions perſonall, 2 s 4d. *Non Pros.*
For the Copy, 12 d.
For every Non-ſuit in Actions reall, 4 s 4 d.
For the Copy, 12 d.
For the exemplification of every Eſſoyn and Nonſuit thereupon when it ſhal happen, being very ſeldom, 7 s 6 d. *Exemplifica.*
For the Copy thereof, 3 s 4 d.
For the Clark, 12 d.
For ſeverall fees from ſeverall Officers of the Court towards the numbring and marking of the Rolls, 4 l. 9 s *Feod annua.*

Outlawry

Outlawry Office.

In the Kings Attorney generall his Office of the Outlawries executed by his deputy Maſter Johnſon, *the Fees are as followeth,* viz.

Cap. utl. ſpecial. FOR a ſpeciall *Cap. ut ligat.* againſt body, Lands, and goods, 2 s 4 d.
For a *Proprium*, 14 *d.*

Habeas Corp. duces tecum. For every writ of *Hab. Corp. & duces tecum*, when they are ſued forth, 2 s 4 d.
If a propr. 14 d.

Cap. utl. generall. For a generall Cap *ut ligat.* 10 d.
If a propr. 6 d.

Certifica. utl. in lect. For ingroſſing and certifying a ſpeciall writ, with the Inquiſition returned by the Sheriff, of lands, or goods found thereupon, and for the Exigent, with the Return thereof at large certified into the Exchequer, when it is required, the Office Fee is eight ſhillings, unleſſe it be commanded by the *L.* Treaſurer, Chancellor, or Barons of the Exchequer, or by the Kings Attorney generall, or Solicitor, for his Majeſties ſervice only, then no Fees is due. 8 s. *aut nil.*

Certifica. reverſall in ſcium. For ingroſſing and certifying a Reverſall into the Exchequer to diſcharge ſeizures upon Outlawries, when any is, 5 s.

Exon. libri de utl. And to the Clark, 4 d.
For entring the Reverſall in the outlawry

lawry Office to diſcharge all Proceſſe thereupon, or upon any VVrit of Errour, 2 s 8 d.

For certifying of an Outlawry, or Reverſall when it is pleaded; 2 s. *Certifica. utl. vel reverſall.*

And to the Clark, 4 d.

For ſearch of an Outlary one Term (as in all other Offices) 4 d. if above a year, then 3 d. a Term, which is the utmoſt. 3 d. *Search.*

For entring and filing an Exigent, with one Proceſſe thereupon, 4 d. *Filaco exſa.*

Theſe ſeverall Fees aforeſaid were paid and received in Eaſter *Term* 34. Eliz. *and ever ſince to mine own knowledge; for ſo long I have been and continued Clark and Deputy to all Attornies generall that have been ſince that time.*

Theſe (as I underſtand) are the true Fees.

The Fees of the Seale for Writs.

ALL Writs of the Kings Bench, and common Pleas, 7 d. *Seales of writs*

The exemplification of the Kings Bench, 2 s 6 d. *Exemplifica.*

The exemplification of the common Pleas, 2 s 2 d.

Outlawries, 1 d.

Propr. 1 d.

Fees

Fees due to the Marſhall, and Proclamator of the Court of common Pleas, given by Order made by all the Judges of the Court, Term. Trin. 31. H. 1. poſt conqueſtum, and received accordingly by the ſaid Marſhall and proclamator, for any thing appeareth to the contrary, untill 11 Eliz. *and ever ſince.*

Judgments. *Inprimis*, For every Judgment, and Nonſuit, 4 d.

Fines. *Item*, For every Fine, 8 d.

Item, For every finall Judgment, 12 d.

Chiefe Uſher of the Exchequer, and Marſhall and Proclamator of the ſaid Court of common Pleas by Leaſe from *Clement Walker* Eſquire, who hath the ſame Office in inheritance by grand Serjeanty.

The foure Cryers.

HEreafter doe inſue the good Ordinances and Rules, made as well by the Kings Juſtices of the common Pleas in times paſt, as by the Juſtices now being, for the good rule and order of the ſaid Court, which ſame now Juſtices do charge and command every of the ſaid Officers and Attornies well and truly to obſerve and keep, upon the paines therein limited.

Which

Which ſaid orders were inroled *Termin. Trin.* 35. H. 1. *poſt conqueſtum rot:* 494. *Jo. Prieſt* chiefe Juſtice of the common Pleas, *Ni. Auſten, Pet. Arder, Ro. Davers, Ro Dawby, Wa. Moile, and John Needeham*, juſt. of the ſame Court.

The Cryers Fees from 11 Eliz.

FOR every Judgment, 4 d. *Judgments.*
For every finall Iudgment. 12 d.
For every Nonſuit, 4 d.
For every fine, 8 d. *Fines.*
For every Recovery, 8 d. *Recoveries.*
For calling a Iury, if they fill not, 2 s. *Juries.*
For every Iury if they fill, and ſerve, and give up their Verdict the ſame day, at the Bar the ſame day, and for keeping them till then, 16 s.
If the Iury lye all night, that we be forced to watch and wait on them all night, 30 s.
For carrying every bundle of Records out of the Treaſury into the Court, and back again into the Treaſury, 6 d. *Carrying Rolls.*
For every Attorney that is ſworn, 6s. *Attorn. iurat.*
For every Baile, 12 d. *Bailes.*
For every Oath in Court, 12 d. *Oathes.*
For every wager of Law, old Fees, 4 s 4 d. *Wagers of Law.*
For every *Scire fac.* called in Court, 4 d. *Calling Scire fac.*

Niſi prius For every *Niſi Prius* before my Lord thiefe Iuſtice; 4s.

Guardians. For every admittance to a Guardian, 12 d.

The Fees of the Keeper of the Court, from 11. Eliz.

Feod Annuale. FRom the Clarke of the Treaſury for hanging the Cloath of the Court, 6 s 8 d.

Wager of Law. For a Wager of Law, and Wagermen, 9 s 6 d.

Iuries. For a Iury at Bar, 5 s.

Attornies. For every Attorney ſworn in Court, 12 d.

Niſi prius. For a *Niſi prius* in Midd: 2 s.

Bailes. For a Baile, 4 d.

Fines. For a fine, 4 d.

Deeds acknowledged. For a Deed acknowledged, 4 d.

Satisfaction. For ſatisfaction acknowledged, 2 s.

The Fees of the Clarke of the Inrolements of Fines and Recoveries

Of fines and recoverys ingroſſ. INprimis, The fee due to the Iudges by the Stat. of 23 *Eliz.* for inroling of every fine and recovery, 6 s 8 d.

Exemplification. *Item*, Due to the Iudges by the ſame Statute for exemplifying every inrolement, 5 s.

Search. For ſearch of every fine inrolled for every yeare, 16 d.

For

For copying every fine inrolled, for every ſheet, 12 d. *Copies.*

For the Clarks fee for inrolling by the Roll, 8 s 8 d. *Inrolements.*

For exemplifying after the ſame rate, 8 s 4 d. *Exemplification.*

For every Rule upon amendments, 3 s 4 d. *Rules for amendments.*

For returning Writs of Covenants upon fines, and Writs of Entry, Summons, and Seizins upon common Recoveries, as Deputy of Record for Sheriffs appointed by the Court, the ancient fee is, 2 s. *Return of writs of entry. Covenant ſeizins, &c.*

The Porter of the Court, his Fees from 11 Eliz.

FOR every Writ of Entry with Mr. Attorney generall, 4 d. *Writs of entry.*

For a Iury at Bar, 5 s. *Juries at Bar.*

For a *Niſi prius*, 2 s. *Niſiprius.*

For a Wager of Law, 6d. *Wagers of Law.*

For a fine acknowledged, 4d. *Fines.*

Fo a Baile, 4 d. *Bailes.*

For ſatisfaction acknowledged, 2 d. *Satisfaction.*

For the Attornies Oath, 12 d. *Attornys ſworn*

For a Guardian, 4 d. *Guardians.*

Alienation Office.

THo. Ravenſcroft, Fran. Poulton, Geo. Coultrop, Eſquires, Commiſſioners.

Tho. Bond Eſquire, Receiver.
Take no fees, but receive a certain ſtipend from the King.

Fees taken by the Maſter of the Chancery, for that Office appointed.

Docquets. FOR ſigning every Docquet upon Licenſe and Pardon of Alienation, 2 s.

Pt. Writs. For every Writ of Entry, for lands holden in chiefe, 2 s.

For VVrits of Entry of Lands not holden in chiefe, 4 d.

Affidavits. For Affidavits upon diſcharge of Tenures, 2 s.

The uſuall Fees taken in the Office of Compoſitions for Alienations, by the Clarkes there.

Certificate. FOR a certificate upon a VVrit of Entry, 3 s 4 d.

Pardon. For the warrant to the great Seale for pardon of Alienation, 10 s.

Diſcharges. of Proces. For viewing the Subiects evidences, ſearch of the Tenures and drawing, of the Affidavit with Proces, to be diſcharged, 6 s 8 d.

Releaſe. For a Releaſe in nature of a Pardon of alienation upon a common Recovery, and for the like releaſe upon a ſpeciall Livery, and alſo for a Releaſe upon a generall

a generall pardon at the Coronation, or other times for each of them, 1 3 s 4 d.

For the note of a Sheriffes diſcharge upon a ſeizure, 3 s 4 d. *Diſcharge of ſeizure.*

For every Exo. and for certifying thereof into the Exchequer, 12 d.

For the Sheriffs acquittance, 6 s 8 d. *Acquittance.*

FOR entring in a large Book every writ of Covenant fineable, *videlicet.* in the Term time, 6 d. *Entry of Writs.*

And in the Vacation, 12 d.

For entring in another Book remaining in the ſaid Office every Docquet upon a licenſe of Alienation in the Term time, 12 d. *Licenſe of Alienation.*

And in the Vacation, 2 s

For every Docquet for a pardon of Alienation in Proces of *Diſtringas*, or *Scire fac.* 2 s. *Pardon.*

For every Writ of entry of lands holden *in capite*, and entred in the ſame book, 6 d *Entry of Lands holden.*

And the Vacation, 12 d

FOR indorſing every VVrit of Entry, 6 d. *Indorſing bre.*

For indorſing every VVrit of Covenant in Term, 4 d. *Intr. bre.*

In the Vacation, 6 d.

For entring unfiled writs, 6 d.

For drawing the diſcharges of Tenures in Parliament, and entring them, 3 s. *Diſcharges of Tenures.*

The Under-Sheriff of Middlesex *taketh these Fees following in his Majesties Court of common Pleas.*

Warrant. FOR a Warrant upon a Cap. for every name, 4 d.

Return ven. fac. for a return of a *Venire fac.* 2 s.

For a Warrant upon a Cap *ut ligat*, 4 d.

Retourne Hab. corpus. For returne of a *Hab. corpora Juratorum*, 4 s.

Sum. Jur. For summoning the Jury, for every name, 4 d.

Cepi corpus. For a *Cepi corpus*, for every name, 4 d.

Return Exfa. For returne of an Exigent for every name, 4 d.

Return procla. For returne of a Proclamation, 12 d.

Scire fac. For return of a *Scire fac.* 2 s.

For return of a *Nihil habet* on a *Scire fac.* 12 d.

The

The Warden of the Fleet his Fees.

A note of the Fees due and belonging to the Warden of the Fleet, and under-Officers, as appeareth by a Commission under the great Seale of England *from the late Queen* Elizabeth *in the third yeare of her Raign, and confirmed in the 37. yeare of her Raign, what every severall Prisoner in their severall degrees ought to pay.*

Commitments. AN Arch-Bishop, a Duke, a Dutchesse, are to pay for their Commitment fee to the said Warden and his Officers, having the first weeks dyet with wine, 21 l 10 s.

Also they are to pay for their ordinary weekly dyet with wine, 3 l 6 s 8 d.

Commitments. A Marquis, a Marquesse, an Earle, a Countesse, a Vice-Countesse, are to pay for their commitment fee to the said Warden and his Officers, having the first weeks dyet, 14 l 13 s.

Also they are to pay for their ordinary weekly dyet with wine, 2 l.

A Lord Spirituall, or Temporall, a Lady, the wife of a Baron, or Lord,

are to pay for their commitment fee as above ſaid, having the firſt weekes dyet with wine 11 li. 4 s. 10 d

Alſo they are to pay for their ordinary weekely commons with Wine, 1 li. 6 s. d

A Knight, a Lady the wife of a Knight, a Doctor of Divinity, a Doctor of Law, or others of like calling; are to pay as aforeſaid for their commitment fee, having the firſt weekes dyet with wine, 5 li.

Alſo they are to pay for their ordinary weekely commons with wine, 18 s 6 d.

Commitments. An Eſquire, a Gentleman, a Gentlewoman that ſhall ſit at the Parlor commons, or any perſon under that degree, that ſhall be at the ſame commons; are to pay for their commitment fee as aforeſaid, having the firſt weekes dyet with wine, 3 li. 6 s 8 d.

Alſo they are to pay for their Ordinary weekely commons with wine, 10 s

A yeoman, or any others that ſhall be at the Hall commons, man or woman; are to pay for their commitment fee having the firſt weekes dyet, 33 s. 4 d.

Alſo they are to pay for their ordinary weekly commons 5 s

A poore man in the ward, that hath part of the box; is to pay for his commitment fee, having no dyet, 7 s. 4 d.

Alſo

1653

Also there is due to the said Warden 20 d. Per diem, *for the whole day, and* 10 d. *for every man, that he may lawfully license to go abroad.* *Licence to go abroad.*

MOreover the said Warden hath for return of writs as Sheriffes, and Bailiffs of liberties have, by which he hath allowance for return of every *Hab. corp.* or Attachment, 2 s 4 d. *Return of writs*

Also for every *Habeas corpus cum causa*, there are fees for returning the causes, *Videlicet.*

For allowing the writ, 2 s 4 d
For returning the first cause, 2 s..
For every execution 2 d
For every action, 12 d

Which are due to the Wardens Clarkes, and 5 s. to the Wardens Servants for bringing every prisoner safe to the Bar *Bringing a prisoner to the bar,*

Also he hath for allowance of every Superfed. and discharge, 2 s 4 d *Allowance of superfed.*

Also when any man is committed by Order out of the Courts of Star-chamber, Chancery, Court of wards and Liveries, Court of Exchequer, Court of Requests, and Court of dutchie, the VVardens Servants (being sent to apprehend them, and bring them to the Fleete, according to the Tenour of *Travelling charges for apprehending parties committed,*

of their Commitment) have foure pence the mile where they are apprehended, and six pence the mile back again and the Clark hath 2 s. for making the writ.

A Table of the due fees of the Protonotaries court in the common Pleas.

These are the fees due and belonging to the three Protonotaries of the court of common Pleas at Westminster for Entries of Declarations, Pleas, and Judgments. And also for making and entring of Writs, in their severall Offices, and for other dues belonging iug to them confirmed and allowed by the late King, by his Letters Patents under the great Seale of England, dated at Cambury the 22. of July, in the 12. year of his Raigne, and are mentioned and expreßed in a Schedule of fees to to the said Letters annexed,, and recorded in his Maießies court of common Pleas at Westminster, in the Term Saint Michael *next following*, Rot. quinto, sexto, septimo, octavo, nono.

Common decla. & Pleas.

IN primis, for the entry of every common declaration, common Plea in bar, wherein no freehold is pleaded, common Replication, & Reioinder in actions personall, 12 d

Speciall Narr. in actions personall.

For the entry of every speciall Declaration, speciall Plea in Bar, or Abatement, Freehold, Replication, or Rejoynder, and Pleas subsequent, in sheets, every sheet containing twelve lines at the least, and every line containing ten words. 2 s

And

And for every ſheet exceeding, 8 d

For every declaration in actions upon the caſe, *Ejectione firme*, accompt, annuity, conſpiracy, covent, deceit, partition, *Plegiis acquiet.* and debt upon Statutes, plaint in Aſſize, and the like ſpeiall actions, and in reall mixt and popular actions, if the Declaration or plaint exceed not three ſheets, 2 s *Speciall Narr. in ſpeciall actions.*

And for every ſheet exceeding, 8 d

For the entring of every Bar, Replication and Pleas, ſubſequent in every of the actions laſt above recited, and in the like actions, not exceeding three ſheets 2 s *Bar in ſpeciall actions.*

And for every ſheet ſo exceeding, 8 d

For the Oyer of every Bil, Obligation, Indenture, Record, or Certificate, or the like, entred *in hæc verba*, not exceeding the length of three ſheets, 2 s *Oyer de faits.*

And for every ſheet above that length 8 d

For recording of every apparance by the Court, 2 s 4 d *Apparances.*

For the entry of every recognizance without condition, challenge to the Sheriff or Coroners, or to the Array, or other ſpeciall averments, 2 s *Recognizance. Challenge.*

And for the entring of every recognizance with a condition, 4 s

For every Judgment in debt, Treſpaſſe, or detinue, without a Tales for the Protonotary, 2 s *Judgments.*

And

Adiournments. And for entring of every adiournment, 4 d.

Iudgments. For every Judgment with a Tales, besides the fee above recited, 2 s

Remanets. For every *Remanet*, and Judgment for costs given to the Defendant by the Statute besides the fee aboveſaid, 2 s

Iudgments. For every Judgment in all other actions, as well perſonall as mixt, and reall, and prohibitions, and the like, 4 s.

Satisfaction, Recordatur, diſcont. Retraxit Nolle proſequi. For every ſatisfaction, *Recordatur*, diſcontinuance, *Retraxit*, Relinquiſhment, *Nolle proſequi*, or the like, in actions perſonall, 2 s

And in reall actions, 2 s

Recoveries. For the entry of a ſingle Recovery 4 s, and the Writ of ſeiſin thereupon 10 s 6 d.

And for every Voucher more, 4 s

For the entry of every *Mittimus*, & *Dedimus poteſtatem*, for a common recovery, 6 s.

For the entrance of a Summons *ad Warr.* for a common Recovery, and the writ of Summons *ad Warr.* 4 s. 6 d.

For the entry of a *Certiorari* to certifie a warrant of Attorney for the tenant or voucher, 4 s.

And if for both, 6 s

Forraine Voucher. For every forraigne Voucher ſent to the common Pleas to ſummon the Vouchee, if the Record be not above three ſheets, 2 s.

And for every ſheet more, 8 d.

The like fees are to be paid when the Record

Record is remitted back again, after the Voucher determined. 2 s. 8 d.

For the entry of every ſpeciall Verdict, whereupon a *Cur. adviſar. vult* is entred, being not above the length of three ſheets, written as aboveſaid 2 s. *Special verdict*

And for every ſheet exceeding that length, 8 d.

For the entry of every general verdict, with a *Cur. adviſar. vult.* without a Tales, 2 s. *Generall verdict.*

And with a Tales, 4 d.

For the entry of every Remittitur of debt or damages, 12 d. *Remittitur.*

For the entry of every Information upon any penall Law, and ſigning the *Subpena* only, 2 s. 8 d. *Information.*

For the entring of every ſurmiſe for a Prohibition to be granted, not exceeding the length of three ſheets, as aforeſaid, 2 s. *Prohibition.*

And for every ſheete above that length, 8 d.

For the entry of the Oath of every witneſſe to prove the ſurmiſe in a Prohibition, or *Audita querela* brought by an *Infant*, and the entry of the proofes *de morte & vita virim*, dower, and the like actions and ſuits. 2 s. *Proof de ſuggeſt*

For the releaſing of any default in any reall action, 2 s.

And entring the recital of the grand Cape. 4 s.

And if under five marks, *Nihil.*

For

Exami. record. For examining every Record of *Nisi pri*, 12 *d.*

Record in coun. palatine. For making the Record for tryall of an iſſue in any of the County Palatines for the firſt three ſheets, 2 *s.*

And for every ſheet more after, 4 *d.*

Exemplificat. For the Exemplification of any Record, not exceeding ſix ſheets, 5 *s.*

And for every ſheet exceeding that rate, 8 *d.*

Seizin in dower For the entring of Seiſin in dower, and dying ſeiſed, the return of the Seiſin, exceeding not above three ſheets, 4 s

For every ſheet exceeding, 8 d

Non ponend. in aſſis. For entring of writs of Exemption *de non ponend in iurat*, and patents, *de libertat allocand*, and Protections,

Cogn. de pleas. cognizance of Pleas, and the like, according to the rates aboveſaid, if they exceed not three ſheets. 2 s

And for every ſheet exceeding, 8 d

Judgment per default in waſt. Qua. impedit. For the entring the default upon the diſtreſſe in waſte, *Quare impedit*, and the like, and Judgment thereupon if the title or count do not exceed three ſheets. 6 s 4 d

And if it be more then as aforeſaid, for every ſheet. 8 d

Quo warranto. For entring of a *Quo warranto*, if it exceed not three ſheets. 2 s

For the entry of every Plea thereupon, according to the ſame rate before, 2 s 8 d.

For

For the entry of a plea of accompt pleaded before Auditors if it be not above three sheets written as above-said, 2 s. *Account before Auditors.*

And if more, for every sheet exceeding, 8 d

For the Entry of every Summons, and Severance, and Aide Pryer, 2 s *Severances.*

For the admission of an Infant to his *Prochein amie*, or Guardian, 2 s *Aide Pryer.*

And if it be by commission 4 s *Cap. pro fine,*

For entring of the defendants discharge upon a *cap. pro fine*, or for a contempt, 2 s

For the like upon Rescous, returned and admitted to his fine, 4 s

For traversing of a Rescous, and Issue thereupon, 6 s

For entring of the allowance of every generall and speciall patdon of Outlary before Judgment, and after, 5 s 4 d

For entting of a *Dies dat*, in Debt, detinue and trespasse 12 d

And in all other actions, 2 s

Fot the entring of the Receit of a feme covert, Tenant in taile, Lessee for years, or the like, 2 s

And for the entry of the plea, if it exceed not thee sheets. 2 s

And for every sheete exceeding, 8 d

And if the Receit be by Writ, then more for entring of the Writ, 2 s

For the entring of an Assize delivered in the common Pleas by Iustices of

of assise to be inrolled, for every sheet 12 d

And if the Assize come into the common Pleas by Certiorar. then more for entring the Certiorar. 2 s

Abridgement. For entring every abridgment of the demand in dower Assize, or the like, 2s

Pone. For the entry of every Pone to remove a plea by writ out of the county court there holden by Justices, and for the Return of the *Pone.* 4 s

Mittimus. For the entring of any record sent in the common Pleas by *Mittimus*, or otherwise; and likewise for the entry of every *Rege inconsulto*, or such like, if it exceed not three sheets, 2 s

Rege inconsulto. For every sheet so exceeding, 8 d

Certificate of bastardy. For the entring of every Certificate of Bastardy certified by the Bishop, and the awarding of the Writ and Judgement thereupon, 6 s

Journies accounts. For the entry of the License of the Court, to purchase a new writ by Journies accompts, 2 s

Delivery of Records. For the entry of every Originall Writ delivered of Record in reall or mixt Actions.

Challenge. For the entry of every sheet above three sheets of every challenge to the Sheriffe or Coroners, or to the Array, or other speciall averments, or the like, 8 d

Remanet. For the entry of every *Remanet* in reall Actions, 4 s

For the entry of every *Remittitur* in reall

reall and mixt Actions, 2 s.

For the entry of every ſheet above three ſheets of every ayde Pryer, 8 d. *Aid Pryer.*

For the entry of an admiſſion of a Guardian, if it be by Commiſſion and *Mittimus*, 6 s. *Admiſſion to Guardians.*

For the entry of a priy Seale, for every ſheet, 8 d. *Privy Seale.*

For the entry of the Licenſe of the Court to compound upon penall Statutes, 2 s. *Licenſe.*

For entry of every warrant of Attorney made by the Tenants in common Recoveries, or the like, after their appearance at the Bar, 2 s. *Warrants of Attorney.*

For every Judgment by ſpeciall confeſſion of the Title in *Quare imp.* or the like, if it exceed not three ſheets, 4 s. *Qua. Imp.*

And for every ſheet after, 8 d.

For the entring of every ſpeciall Imparlance, 2 s. *Speciall Imparlance.*

For the entring of every Committitur of a Priſoner by the Roll, being brought to the Bar by writ, and every tender of the Body in diſcharge of the Baile, 4 s. *Committitur.*

But it it be without Writ, then in either Caſe but 2 s.

For entring of every demand of a Priſoner to appeare and remand the ſaid Priſoner, 4 s. *Remand.*

For the entry of every Eſſoyne in the Plea Rolls, as upon Wagers of Law, 12 d. *Eſſoyne.*

For entry of the Baile upon every *Baile.*

Reverſall for inſufficiency of Exigent, or of the Return, 2 s 4 d.

Nar. ſur. demiſe For the entry of every Declaration in debt upon demiſe, or the like ſpeciall Declaration, if the Declaration exceed not three ſheets, 2 s.

And if ſuch Declaration exceed the number of three ſheets, then for the entry of every ſuch ſheet, containing twelve lines, and every line tenne words, 8 d.

Common Decla. For the entry of every ſeveral count upon an Originall in Debt, Detinue, Treſpaſſe, and the like, 12 d.

Actions on the caſe. For the entry of every ſeveral count in Actions upon the Caſe and Account, and the like upon ſeverall dayes, if the count exceed not three ſheets, 2 s.

Account. And for every ſheet ſo exceeding, 8 d.

Special conditi. For the entry of every ſpeciall condition, or indorſment of any obligation entred *in hæc verba*, not exceeding the length of three ſheets, 2 s.

And for every ſheet ſo exceeding, 8 d.

Common condi. But if the condition be in debt for payment of money at one day, or under the length of two ſheets, then for the entring thereof but 12 d.

Mittimus. Certiorari. For the entry of every *Mittimus*, or *Certiorar.* and the Return thereof, 4 s.

But if the Return thereof exceed three ſheets, then for every ſheet ſo exceeding, 8 d.

Prohibition. For entring of the Count in a Prohibition, and pleadings thereupon after

after an appearance of the Defendant, not exceeding the length of three sheets, 2 s.

And for every sheet above that length, 8 d.

Attaint, false Judgment.

For the entry of every VVrit of Attaint, or false Judgment, 2 s.

For the entry of the Return thereof, and the assignement of *Errours*, or false Oathes, not exceeding three sheets, 2 s.

And for every sheet more, 8 d.

Proof in a Prohibition.

For the entry of every sheet above three sheets of the Oath of every witnesse examined to prove the surmise in a Prohibiton, or *Audita querela* brought by an Infant, and the entry of the proofes *De morte & vita viri* in dower, and the like Actions and suits, 8 d.

Audita querela. And Dower.

Fees due to the Prothonotaries for Writs, and the entries of them amongst other dues.

Fees for Writs.

Prohibition.

FOR every Writ of Prohibition, or consultation, not exceeding foure sheets, 2 s.

For every sheet so exceeding, 4 d.

Withernam,

For every Withernam return *habend.* after appearance, second deliverance,

Habeas corpus. Sum. & al. brs. Spenal.

Writ of priviledge, *habeas corpus*, *Procedend. certiorari*, Summons and Resummons, *Petit cape*, *we. fac. sci. fa. Elegit*, *extent*, *superss. Sub pœna.* Writ to the

Biſhop, Attachment in Aſſ. *Diſtrin. Iur. habeas corpus*, and *Diſtringas* in Aſſ. *& attaint*, and the like, *habere Fac, poſſeſſionem*, VVrits of view, *Mittimus. Idemptitat. nois*, and every other ſpeciall Writs, 2 s.

Entry of Writs. For the entring of every ſuch Writ, which requireth an entring not exceeding foure ſheets, 2 s.

And if more, for every ſheet as aboveſaid, 8 d.

Ca. ſa. fi. fac. Teſtat. diſtr. enquire in truſ. For every *Ca. ſa. & fi. ſa.* 6 d

For every *Teſtat. ſur. ca. ſa. & fi. ſa. diſtrings. ad deliberand.* and Writs to inquire of damages in treſpaſſe and Replevin, 12 d.

For Writs to inquire of damages in Covenant, Eiectment, Actions upon the caſe, and the like, 2 s.

Inquir. in caſu. Cap. & Exi. pro fine. For every *Capias pro fine*, 6 d.

For the *Exigent*, upon a *Capias pro fine*, 10 d.

Intrat. Retor. Bri. For the entry of the Return of every Writ in the Prothonotaries Roll other than the *Ca. ſa.* return'd *non eſt invent.* and the *fi. fa*, return'd *nulla habet bona*, whereupon further proceſſe is awarded not exceeding foure ſheets, 2 s.

And if more, then for every ſheet, 8 d.

Baile ſur. privi. Habeas corp. For the entring of every Writ of Priviledge, or *habeas corpus*, with the Baile for one cauſe, 6 s.

And for every name more, 2 s.

Committitur. For entry of every *Committitur* upon a *habeas corpus una cum die & cauſa*, 2 s.

And

Aud for every other cauſe, 2 s

For every Reverſall upon an Outlary for default of Proclamation with one name, and the Baile or *nolle proſequi*, 4 s 4 d. *Reverſall.*

And for every name more, 2 s.

For every *Ca. ſa. & fi. fa.* after a *devaſtavit*, 2 s. *Ca. ſa. & fi. ſa. pt. Devaſtavit.*

Whereof by allowance from the Prothonotaries the Clark hath had, 8 d.

For every ſheet exceeding four ſheets of Writs to inquire of Damages in Covenant, Ejectments, Actions upon the caſe, and the like Actions, 4 d. *Inquir. in caſu. &c.*

For the Writ of Liberat, or the like ſpeciall Writs, 2 s. *Liberat.*

Whereof by allowance from the Prothonotary the Clark hath had, 8 d.

For the entry of every ſuch Writ and the entry of every other ſpeciall Writ which requireth an entry not exceeding foure ſheets, 2 s. *Intr con. Bri.*

And for every ſheet ſo exceeding, 8 d.

For every *Diſtringas* in detinue, 12 d. *Diſtringas.*

Whereof the Clarke by allowance from the Prothonotary hath had, 4 d.

For Writs to inquire of Damages in Covenant, Ejectment, Actions upon the caſe, and the like Actions, if they exceed not foure ſheets, 2 s. *In quire in caſe &c.*

Whereof by allowance from the Prothonotary the Clark hath had, 8 d.

For the entry of every *Committitur*, upon a *habeas corpus una cum die & cauſa*, with one cauſe returned, beſides the entry of the Writ, 2 s. *Committitur.*

And for the entry of the writ, 2 s
And for every other cauſe returned, 2 s

Proces. Sur. Informations. For the ſigning of all proceſſe upon information, excepting the firſt *Subpæna*, 1 s 4 d

The Prothonotaries Clarks Fees.

Copies. IN *primis*, for the copies of common declarations and pleas, for every ſheet containing twelve lines, and every line ten words, 4 d

For every ſheet in reall and mixt actions, and actions upon any Statute, and the like, 8 d

Draughts. For drawing of every ſpeciall declaration and Plea, for every ſheet, 8 d

Continuance. For every continuance every Terme of every iſſue writ, *imparlance*, *demurrer*, of ſpeciall verdict, or adiournment, 4 d

Exemplification For exemplifying every Recovery with a ſingle voucher 4 s 6 d

For exemplifying of a double voucher. 6 s

And for every Voucher more, 12 d

For exemplifying of any record, not exceeding eight ſheets, 5 s

And for every ſheet more, 6 d

Drawing of Writs and entries thereof. For drawing of every extraordinary long writ after the rate of every ſheet 8 d

And for the entry thereof (if it ſo require) for every ſheet 4 d

For

For a copy of a iudgment for every sheet, 8 d

Copies of Iudgments.

For the entry of every writ, and the Return thereof into the Prothonotaries Remembrance for drawing up of a iudgment, if it exceed not three sheets. 6 d

Entries in remem.

And for every sheet after, 4 d

For entring of every common rule into the bill of Pleas, or common Remembrance, 4 d

Rules.

For the entring and ingrossing every Summons for a recovery, and for the making of the writ of Summons, 2 s

Sum. for recoveries.

For entry of every *Mittimus* and *Dedimus poteſtatem* for a recovery, 2 s. 6 d

Mittimus.

For the ingrossing of every *Niſi prius* after the Rate of every sheet, 4 d

Ingro. niſi prius

For entring of every *Teſtat. ſur. ca. ſa. & fi. fa.* 4 d

Intrt. caſe teſtat

For the Search in every Term in the Prothonotaries Office in his doggets, or Remembrances, 4 d

Searches.

For the iſſuing out of the Court mony, of the party receiving it, 1 d in l

Court money.

For the making of every long writ, as Prohibitions, and the like, for every sheet, 4 d

For the proſecution ond iſſuing out of proces for the King to bring in the party for to make fine for his contempt untill the party render himſelfe, or be Outlawed, beſides the fees of the Court, 3 s 4 d

Making long Writs.

Cap. pro fine,

And if there be cauſe of proſecuti-

on after the *Exigent* returned, then more, 3 s 4 d

Copy ſuggeſt. For the copies of ſuggeſtion to grant a Prohibition, for every ſheet 8 d

Tract. Prohibit. ſpecial verdict, &c. For drawing of every ſurmiſe to have a Prohibition, ſpeciall verdict, and the like, for every ſheete, 8 d

The Prothonotaries Clarkes Fees for Informations onely.

Informations. FOR ingroſſing of every information, 8 d

For a copy of the ſaid Information, if it amount to the number of five ſheets of paper, or upwards. 3 s 4 d

If it be under the number of five ſheets, then for every ſheet, 8 d

For the making of every *Capias pro fine* upon an Information, 6 d

For entring of the generall iſſue upon the Roll where the Information was firſt entred in the Terme it was firſt exhibited, 8 d

For the Regiſtring of every Licenſe to compound in the Office book, 4 d

An ancient fee due to the ſecond Prothonotaries Clarks only.

Fines. FOR recording of every fine acknowledged at the bar, by writ, and moved by a Serjeant 4 d

Fees

Fees due to the Secondaries of the Prothonotaries in their ſeverall Offices.

Secondaries fees.

FOR the copy of every common Rule, 4d *Copies of rules.*

For taking a note of the Rule of the Judges in Court upon a motion of a Serieant, for drawing the ſame Rule in paper in Latin words, and entring it into the bill of Pleas, and the copy thereof, the draught not exceeding ſix lines in paper, 8 d *Drawing and cotting of rules.*

If the Rule exceed ſix lines, then 12d

For every wager in law in Court, or Nonſuit of the Plaintiff, upon a wager of Law, 12 d *Wagers of law.*

For the entry of the *Committitur* of any Defendant to the fleet in Execution of any judgment, or otherwiſe in Court, and for making a copy thereof for the warden of the fleet, containing the cauſe of the Commitment, 12 d *Committitur.*

For the entring of every Commitment to the fleet of any perſon yeelding himſelfe in diſcharge of his Baile, and for the like copy, 12 d

For attending the Judge from his Chamber to *Weſtminſter*, to take a privy verdict tried at the bar, 3 s 4 d *Priuy verdict.*

For reading the record of a demurrer in court or verdict, 12 d *Rec. Record.*

For taking baile in court, 12 d *Bailes*

For

Admission to Guardians. For entring of an admission of an Infant to his prochin Amy, or Guardian in the Prothonotaries remembrance, 12 d.

Copies of Issue and jurors names. For the copy of the Issue and Jurors names to be delivered to the Jury upon any tryall at the Bar, 12 d.

Tryalls at Bar. For reading of evidences upon tryals at the Bar of each Party, Plaintiff, and Defendant, 3 s 4 d.

Satisfa. Recorda. Discontinuance. Satisfaction. For entring of every satisfaction by speciall warrant, *Recordatur*, and discontinuance, 8 d.

For every satisfaction by generall warrant, 4 d.

For entry of every Will or Letters of Administration to inable an Executor or Administrator to acknowledge satisfaction and the entry of the satisfaction, 12 d.

Interrogatories. For every copy of Interrogatories, depositions of persons examined upon Interrogatories by order of the Court for every sheet, 8 d.

Per breve de Privato sigillo,
Wolseley.

Fees

Fees of the upper Bench.

A note of Fees due, and time out of minde uſed to be paid to the Prothonotaries, or chiefe Clarks of the Court of upper Bench, and to their Clarks, as the ſame was preſented upon oath by vertue of Commiſſion in April. 1630 *by* 29 *Attornies of the ſame Court, and hitherto taken.*

Writs.

FOR a Latitat, 5s 1d.

Superſed.
Exigent in Appeale
Diſtring. in Attaint
Habeas Corpus
Certiorari
Procedend.
Elegit
Sub pœna
Retornhend.
Withernam
Second diliverance
Reſtitucon.
Scire facias
Diminucon.
Libello bend.
Prohibicon
Conſultacon.
Proprietate probanda
Diſtr. in detinue
Inquir. de valore
Reſum.
Reattachmt.
Veſa. defend. in audita querela.
Here fac. ſciam. & poſſeſſion.
Reſponſ. in attaint
Rend. expon.
Bre. Epo.
Mittimus.

All theſe are accountable for to the Prothonotaries, *viz.* For every one two ſhillings, out of which they allow the Clarks for writing foure pence.

Venire

Venire fac.
Diſtring. Jur.
Alſ. & plur. cap.
Caſa.
Inquir. de Dais.
Habeas corpus ſur cepi corpus.
Averm. verſus vic.
Fieri fac.
Teſtat. fi. fac. & caſa.
Diſtr. nuper vic.
Non omittas.

For every of theſe beſides the Seale, 6 d. And for every *Deliberat de recordo*, 4 d. And for the *Jura* of the *Diſtr.* of *Nisi.* 4 d. But all theſe have been alwayes to the Prothonotaries Clarks, and are not accounted for to the Prothonotaries.

In every Action wherein the *Plt.* recovereth damages to the value of 13 l 6 s. 8 d. He payeth 12 d in the Pound for damage cleer when the Judgment is ſigned.

Upper Bench Fees for Entries.

FOR every Deed how ſhort ſoever, 2 s.
For every Action of Treſpaſſe, 1 s
For every not guilty, 1s
For every Juſtification in Treſpaſſe, 2s
For every Replication, 1 s 8 d
For every Action of the caſe not above three ſheets 2 s
For every generall Iſſue to it, 1 s
For every Eiectione firme, 2 s
For every Declaration in appeale, 2 s.
For every generall Iſſue therein, 2 s.
For every Recogn. ſur Recorp, for every defendant ſeverally, 2 s.
For every Depoſition upon all Prohibitions, 2 s.
For every Judgment by Circumſtant. 4 s.

Out

Out of which the Clark is allowed, 8 d.
For every other Judgment, 2 s.
Whereof the Clark is allowed, 4 d.
For every diſmiſſion, 2 s.
For every commitment in Execution, 2 s.
For every ſatisfaction, 3 s.
For every apparance recorded, 2 s.
For every *Non proſ.* 2 s.
For every Action of Debt, Detinue, or Treſpaſſe. 1 s.
For every generall Iſſue therein, 1 s.
For every condition performed, 2 s.
For every Replication to it, 1 s.
For a writing denyed, and keeping of the writing, 2 s.
For every Juſtification in Battery, 2 s.
For every *Audita querela*, how ſhort ſoever, 2 s.
For every ſpeciall Imparlance, 2 s.
For every generall Imparlance upon the Plea Roll, 1 s.
For every default mpon Record, 2 s.
For a ſuggeſtion upon a Prohibition how ſhort ſoever, 2 s.
For every Recognizance to it, 2 s.
For every Writ of *Errour* how ſhort ſoever, 3 s 4 d.
For entring the *Errours*, 2 s.
For entring in *Nullo eſt errat*, 2 s.
For every Diminution, 2 s.
For Abatement of a Writ of *Errour* and licenſe to ſue a new one, 2 s.
For entring of the ſame, 2 s.
For every Recognizance ſingle, or with condition, 2 s.
For every Inrolement whatſoever, longer then three ſheets, 6 s 8 d.
After the rate for a Roll on both ſides, 6 s 8 d.

For

For halfe a Roll, 3 s 4 d.
For every Baile by Recognizance, 2 s 6 d.

Upper Bench Fees of Clarks and Attornies.

FOR their fee in every cauſe for every Term, 3 s 4 d.
For their fees at every Nipri. and Inquiry of damages, 3 s 4 d.
For their fee in every Appeale, and Aſſize every Term, 6 s 8 d.
For drawing every Declaration not exceeding 2 ſheet, 1 s.
For every ſheet above one, 8 d.
For drawing every Action on the caſe and covenant, how ſhort ſoever, 3 s 4 d.
For drawing every Eiectment, 2 s.
For every ſheet ingroſſed in Parchment, 4 s.
For drawing a Surmiſe upon a Prohibition, every ſheet, 1 s.
For drawing ſpeciall Pleadings, every ſheet, 8 d.
For copies of Declarations, Pleas, or other things, every ſheet, 4 d.
For continuing every cauſe every Term, 4 d.
For entring all things above three ſheets, every ſheet, 8 d.
For every Judgment by circumſtan. 5 s.
For making every Baile, 4 d.

For making every Bill of Middleſex, *deſtring. nuper vic.* and *Hecorp. ſur corpus per preceptum* thereupon. 8 d.

For making every *Hecorpus. ad fac. hecorpus cum privileg. cerciorari, precedend. elegit, & habere fac. poſſeſſionem*, beſides 4 d. allowed by the Prothonotary, 1 s 8 d.

For

For every sheet in a Writ of Inquiry, Prohibition, Consultation; &c. 4 d.
For entring of every *Scire fac.* 1 s.

Fees received by the Secundary.

FOR taking the acknowledgment of a Deed in Court, 1 s.
For signing every Judgment by confession, *nihil dicit, verdict & demurrer.*
Also for acknowledgement of every Deed, for every Judgment pronounced in open Court, every rule to alter a Visue, for every Rule for a Prohibition, Consultation, Attachment, &c. He receiveth for the poors Box, } 1 s.
For allowance of a Writ of *Errour*, *coram nob. residen.* 2 s.
Whereof to the Box, 1 s.
For an allowance of an *Audita querela*, 2 s.
Whereof to the Box, 1 s.

Upper Bench fees.

FOR every common Baile, 1 s 2 d.
For a speciall Baile upon *A beas. corpus, certiorari*, or attachment, 4 s 1 d.

Fees received by the Secundary for the Judges.

FOR every *Habeas corp. ad fac. & recipiend.* 4 s.

For every *Procedendo*, 4 s.
For every *Certiorari* to remove a forren attachment, 4 s.
For a *Procedendo* thereupon, 4 s.

For

For every *Habeas corp. cum privilegio*, 3 s.
Out of every *Latitat* they have, 8 d.

Fees received by the Judges Clarks.

FOR every *Warrant* for a *Habeas corp.* or any thing to which the Judge putteth his hand in the Term time, 1 s.
And in the Vacation, 2 s.
For the acknowledgment of a Deed which he ſaith is for his Mr. 6 s 8 d.
And for his own fee, 2 s.
For taking the Depoſition of witneſſes upon a Suggeſtion for a Prohibition, for every witneſſe, 6 s 8 d.
And for his own fee for every witneſſe, 2 s.

Fees paid the Clark of the Papers.

FOR copying every ſpeciall Plea, every ſheet, 4 d.
For making the paper book, either iſſue or demurrer, every ſheet, 8 d.
For entring into his book every Record to be read in Court, 1 s.
For entring into his book every cauſe, to heare counſell on both ſides, 1 s.
For entring every Tryall at Bar, 1 s.

The Keeper of the Poſteas.

HAth for the receiving, marking, keeping, and delivery of every Poſtea, 4 d.

The

The Keeper of the files of Declarations

HAth for the filing, pying, and ſhewing the files of every Clark, for every Term, 2 s.

Fees paid to the Clark of the Rules.

FOR entring every Rule, except generall Rules for anſwer, 4 d.
For a copy of every Rule, 4 d.
For every generall Rule for anſwer, being above three, 2 s.
For every Rule given in court with a copy for a Prohibition, or conſultation, he taketh 12 d. and the due is but 8 d. which hath been taken not above 25. yeares. } 8d.
For every Rule with a copy given in Court the laſt day of a Term he taketh 12 d. whereas the due is but 8d. which hath been taken this two or three yeares. } 8 d.
For every copy of a Rule after the continuance day he taketh 8 d. whereas the due is but 4d. which hath been taken two or three years. } 4 d.

All ſuch Affidavits as are read in Court he claimeth this two yeares, or thereabouts to have the keeping of them, and taketh for copies both of Plaintiff and Defendant at his own diſcretion, which formerly hath not been.

Doggetmaker.

THE Secondaries Clark, for making and keeping the Remembrances of Entries, *&c.* Hath of every Clark every Term, 8 d.

Keepers of the Bailes.

FOR entring the common Bailes into Parchment Rolls every Terme, every Clark of the Office giveth what he pleaſeth.

Keepers of the Rolls of Writs.

FOR carrying the Rolls of the Writs to the Hall, and the Office, he hath of every Clark every Term, what he pleaſeth.

Fees paid to the Cuſtos Brevium *and his clarks.*

FOR every record of *Niſi prius* in a ſhort Action of Treſpaſſe, 4 s 6 d.
For every other Record how ſhort ſoever, 5 s.
For every full preſſe of *Niſi pri.* or *Mittimus*, 6 s.
For every *Niſi prius* out of the Crown ſide, 6 s 8 d.
For every full preſſe there, 6 s 8 d.
For every *Niſi prius* upon an Inditement of murther, for every name that pleadeth to Iſſue, 6 s 8 d.
For every ſhort Exemplification in Treſpaſſe, 10 s.
For every Exemplification containing a large skin, 1 l.
For the like in the Crown ſide, 2 l.
For every Exemplification in *Ejectione firme*, 13 s 4 d.

For

For filing a Writ being a *Poſt diem* upon the *Angl.* 4d.
For all pt. *Terminums* at any time after the firſt week ended in the ſecond Term, 1s 8d.
For every *Warrant* of Attorney in murther, 1s.
For every Sheriffs *Warrant* 8d.
For every other *Warrant* of Attorney, 4d.
For every ſearch for a Roll for ten years laſt paſt, 6d.
For every ſearch above ten yeares laſt paſt, 3s 4d.
For ſearch for Rolls for the ſix laſt Termes, 00.
For ſearch of every file of Declarations, Bailes, Judiciall and other Writs after ten yeares, 1s 4d.
For the copy of every ſheet between Party and Party, 4d.
For a copy of a Deed inrolled, for every ſheet, 8d.
For a file of the *Angl.* for every Term after one, 4d.
For the copies of every *writ* or *Appeale*, every ſheet, 8d.

Fees now paid to the Cuſtos Brevium *his Clarkes.*

FOR writing every *Niſi prius* or *Mittimus*, being but one preſſe. 1s 6d.
For every preſſe more then one, 1s.
For writing every Exemplification in Treſpaſſe or Ejectment, 3s 4d.
For writing every large skin of Parchment Exemplified, 6s 8d.

The Fees for writing every *Niſiprius* or *Mittimus* were uncertain untill about *Anno* 2. *Jacobi*, And then it was ordered by the Judges that the Clarks ſhould have for writing of the firſt preſſe, 1s 6d. And if more, then every other preſſe, 12d. And every full preſſe to contain 60 lines.

Fees claimed by the Cryer and Porter.

As Cryer.

FOR calling a Jury,	2 s.
For every Oath given in Court,	4 d.
For taking a privy Verdict,	4 s.
For every argument in Law,	2 s.
For every Wager of Law,	2 s.
For every admission to a Guardian,	6 d.
For a Baile taken at the Bar,	2 s.
For calling a Nonsuit,	4 d.
For calling the *Record*,	1 s.
For calling a default,	1 s.
When a Pardon is pleaded,	2 s.

As Porter.

FOR every tryall at bars,	5 s.
For every privy Verdict,	2 s.
For summoning the Wager men,	3 s.
For a baile taken at bar,	2 s.
For a Record called,	6 d.
For a default called,	6 d.
For a pardon pleaded,	2 s.
For a discharge of a *Rescous*,	4 d.
For a Baile taken in Court,	6 d.

Of all these Fees mentioned and claimed by the Cryer, and Porter, these following have been paid as due, during the time of our knowledge.

As Cryer.

FOR calling a Jury,	1 s.
For swearing every witnesse,	4 d.
For a wager of Law,	1 s.
For a Nonsuit,	1 s.
For a default of a Record,	1 s.
For a *defecit de lege*,	1 s.

As Porter:

FOR summoning the Wager-men,	3 s.
Also the *Porter* receiveth more for the Wager-men, where the Defendant wageth his Law, or is ready to wage it,	1 s.

Feees received by the Clark of the Errours immediately after the Stat. of 27. Eliz.

FOR the Lord chiefe Justices fee for the allowance,	17 s 4 d.
For the Receipt,	5 s.
For the Return,	2 s.
For the Certificate of the first presse,	6 s.
For writing the first presse,	2 s.
For a *Supersedeas*,	2 s 7 d.

These fees amounting to 35 s 3 d, *were paid upon the allowance of the writ and for the* Supersedeas.

FOR the certifying of the Record for every presse, besides the first, 6 s
For writing every presse after the first 1 s
For the Roll, 1 s
For marking *Non pros.* upon the Roll, 5 s

Also immediately after the making of the Statute of Anno 3. Jac. *The fees taken for the Baile were as followeth, upon a Writ of Errour.*

TO the Protonotaries for the Recognizance, 2 s
To the Judges Clark 2 s

Fees upon a writ of Errour.

FOR making the bayle 4 d
For drawing and entring the Recognizance 4 s
Now, and for the space of thirty yeares last past, he hath taken upon the Receit of every writ of *Errour* and *Supersedeas* in a grosse sum, 2 li. 6 s. 8 d
Also for certifying every presse besides the last, 6 s 8 d
For writing every presse besides the first 2 s
For every *Supersedeas* besides the first, with the Seale. 9 s 3 d

The

These Fees last mentioned, were set down by Sr. John Popham, *late Lord cheife Iustice*; Ex relatione Edi. Page cler. Error, *but we do not certify it upon our knowledge.*

ALso he taketh for every bail in a grosse sum, 19 s 4 d

For every writ of Errour, *Tam in redditione iudicii, quam in adiudicatione executionis*, he taketh double fees.

The Marshalls fees as they were certified by Sr. William Knowles, *Knight, sometime Marshall of the Kings Bench.*

IMprimis, for inlargement of every prisoner, which is termed his admission fee, 10 s

Also he demandeth of every Prisoner upon his inlargement, a fine, for not wearing of Irons

For execution in every pound, 3 d

For actions in every pound 1 d. *ob.*

The Marshall taketh for every dismission more then the former fee often shillings. 8 s 8 d

The Deputy Marshall, and Marshalls men, take for every prisoner that is committed in Court, 5 s 6 d

And for every prisoner committed from the Iudges Chamber, 2s 6 d

The Deputy Marshall taketh for the allowance of every *Habeas corpus*, 2s 6 d

The Clerke of the Fines.

THere was an Office invented and erected about *6. Jacobi*, whereby is taken upon the filing of every declaration in debt, where the debt is above 40 li. and not above a hundred Markes, 3 s 4 d. And above a hundred Markes, and not above a hundred pounds five ſhillings: and ſo after the ſame Rate, and alſo in every action on the caſe and treſpaſſe for goods where the damages are laid above forty pounds the like rates, ſo that the Plaintiff or Defendant be not a perſon priviledged, nor the defendant in *Cuſtodia Marr*, whereas before *6. Jac.* in all our memories, no ſuch monies were paid, or demanded.

Fees for tryalls at Bar, taken by ſeverall Officers.

THe Cryer for calling the Iury 2 s
For ſwearing every Witneſſe, 4 d
The Porter for keeping the doors, 5 s
The Cryer for a *Non ſuit*, 2 s
The Deputy Marſhall 2 s
The Tipſtaves or Marſhalls men for a verdict, *ſeden. curia*, 8 s 6 d
If the Iury lye together all night, 17 s 8 d
The Iudges footcloathmen, 12 d a peece, 4 s
The Secundary receives for a verdict in Court, 2 s
And for a privy verdict, 13 s 4 d. which he ſaith is thus divided (*viz*) the Iudge that taketh the verdict 6 s 8 d. to the Secondary 2 s. and the reſt being 4 s 8 d among the Officers that attend.

Of

Of all the Fees mentioned, we preſent theſe following to be due.

TO the cryer for calling the Jury,	1 s
For ſwearing every witneſſe,	4 d
For calling a *Non ſuit*,	1 s
To the Deputy Marſhall,	2 s
To the Porter for keeping the doors,	1 s
To the Secundary, for taking a verdict in Court	2 s
To him fot a privy verdict,	13 s 4 d

And now they take no other fees then theſe laſt mentioned.

We pay into the Crown Office for eſtreating every amercement, 1 s

Alſo there is paid to the Secondaries Clark by every one of the Prothonotaries Clerks every Term that he faileth to bring in his Rolls within twenty foure dayes next following after *Trinity*, *Michaelmas*, *and Hillary Tearmes reſpectively*, and within ten dayes next after *Eaſter Tearm*, 12 d: whereas formerly they had time untill the eſſoine day of the next Terme, to bring them in without paying any fee.

Alſo there is paid to the Secundaries Clark, for the filing of every common baile, after ſix dayes, after every Tearme over and above the fee, 4 d

The Table of which ſeverall payments laſt mentioned is remaining in the Kings bench office.

Fees due and received by Philizers.

FOR every *Cap. Als. Plur. Exigt, Proclama. & Diſtring.* in Treſpaſſe, 6 d

For every Exigent and Proclamation in *Replevin*, 6 d

For every *Pone. cap. Alſ. Plur. Teſtat. in Replevin*; 6 d

For every *Superſed.* upon the mean proces aforeſaid 2 s

For every *Cap. alſ. Plur. Teſtat.* and *Exigt.* in *Truſ. ſup. caſum.* Action on a Statute, *Rap. cuſtodie Truſ. contra formam ordinationis*, Ejectments and ſuch ſpeciall writs, 1 s

For the Proclamation thereupon. 1 s

For the *Diſtring.* thereupon, 1 s

For every *Cap. Alſ. & Plur.* in appeale of *Mayhem* 1 s

For every *Cap. alſ. & plur.* in an appeale of Robberry. 2 s

For every name in every *Cap. alſ. & plur.* in appeale of Murder, 2 s

For every Proclamation in every appeale, 2 s

For every generall *Cap, utl. & delibatur de recordo.* 10 d

For every ſpeciall *Cap, utl: & delibatur de recordo,* 2 s 4 d

For every writ of *Withernam, ſecond deliverance, and return habend. before avowry.* 2 s

For every *Venire facias,* 6 d

For every *Diſtring. Iur. delibat. de recordo, & iur. Niſi prius* 1 s 2 d

For every *Sub pœna*, upon iſſues by originall, 2 s

For entry of Declarations in treſpaſſe by originall 3 s,

For

For entring not gvilty thereunto 1 s
For entring every Ejectment and Action upon the caſe not above three ſheets, 2 s
If longer, then for every ſheet 8 d
For every generall imparlance, 4 d
For every ſpeciall imparlance, 2 s
Copies of Writs of Attaint, before iudgment *per* ſheet. 8 d

Fees due upon Tryalls at Guild-Hall *to the Officers of the Court.*

TO the Clerk that reads the Record and Evidence, 1 s
To the Aſſociate, 1 s
For every default, 2 s 4 d
To the Cryer, 1 s
For ſwearing every witneſſe, 4 d
The Marſhall, 2 s
The foote-cloath, 1 s
The green-cloath, 1 s 6 d,
The dore-keeper, 1 s
The Hall-keeper, 1 s
The Jury men, 8 s
Over-men every one, 4 d
For ſummoning and keeping the Jury 4 s 4 d
Lights. 1 s
Bar-keeper, 1 s
Return of the Poſtea, 2 s
Alſo the Aſſociate taketh in every cauſe where the Plaintiffs Attorny is not preſent, and of every Defendant which appeareth, and hath not his Attorny in Court, for a warrant of Attorny. } 4 s.

The Exchequer.

THis Court hath formerly been a Court of much practiſe and in great eſteem; but of late ſince the Revenues of the Crown have been ſold, there is but little buſineſſe to what formerly, and very likely to be far leſſe, when there will be little or nothing at all left of what related to the Crown, ſave onely the Cuſtomes, Impoſt, Tonnage and Poundage.

The chiefe Judges of this Court are the Lord chiefe Baron, and three other Barons of the Coife, with whom alſo ſits one other who hath the name of a Baron, but hath no voice in Court as to any buſineſſe, ſave the taking accounts of Sheriffs, Auditors, Bailiffs, Receivers, *&c.*

The ſubordinate Officers are,

1. The Kings Remembrancer, now called the States Remembrancer, in whoſe Office are ſeverall Attornies.

2. The Lord Treaſurers Remembrancer, and in that Office likewiſe ſeverall Attornies.

3. The Clark of the Pipe.

The Controler of the Pipe, and ſeverall Clarks there.

4. The Clarke of the Office of Pleas in his Office: there are likewiſe ſeverall Attornies.

5. The Clarks of the Eſtreats.

6. The forrain Oppoſer.

7. The Auditors of the Court, which were anciently many.

8. Tellers, and one of them in chiefe, and Undertellers their Subſtitutes.

9. The Clark of the Tallies.

10. The

10. The Chamberlain of the Court.
The chiefe Cryer, and ſeverall other Cryers.
The Uſher, and Porter of the Court, and Court Keeper.
The Keeper of the Records.

This Court of Exchequer hath in it a divers way of proceeding:

As firſt, There is a courſe of proceeding ſutable in moſt things to the common Law, proceedings in other Courts, and that is, of their (*Quo minus*) out of the Office of Pleas, which writ was anciently to be granted to ſuch Party only, who was either Tenant or Debter, or ſome waies accountant to the King; and therefore the end of the Writ concludes, that he is for default of the Defendant, giving him ſatisfaction, leſſe able to ſatisfie the King; but at this day the practiſe is grown generally in all caſes almoſt, but more eſpecially in *Wales*, where no Writ out of the Upper-Bench and Common-Bench lyes, ſave only a *Capias ut ligatum*, and this Writ which ſo farre relate together, as that they both pretend to be by way of Prerogative for the King: The rules formerly given for proceedings at common Law in Upper-Bench, *&c.* will ſerve you for this.

The Exchequer Chamber.

THis Court is as it were the Chancery of the Exchequer, in which ſits as the Chiefe Judge or Juſticer, formerly the Chancellor of the Exchequer, being aſſiſted with the Lord chiefe Baron, and the Barons of the Coife; and now that there is no Chancellor, the Lord chiefe Baron, and the reſt of the Barons: and the Proceedings had there before them, do much reſemble the Proceedings in the Chancery, and

and therefore refer you to what you will finde following, of the Proceedings in the Court of Chancery, which may be ſome guide to you in this.

The whole practiſe and proceedings which are generally in uſe at the Exchequer Bar, do relate for the moſt part to the two Remembrancers of the Court, which as I told you before, were the Kings, or States Remembrancer, and the Lord Treaſurer or Commitee of the Revenue Remembrancer,

There hath been anciently very much buſineſſe, and that very various in the Kings Remembrancers Office; relating to the Debters, Tenants, farmers, Receivers, accountants, Bailiffs, and Sheriffs; for Debts or Duties due to the King, *&c.*

In the Treaſurers Remembrancer were wont to be all licenſes of Alienation pleaded, and all Proces to iſſue out for the fines non paid upon them, and alſo all Proces for not payment of reſpite of Homage, *&c.* And theſe ſeverall Offices do in many things alſo follow the practiſe of the common Law.

The difference between this Court, and the Courts of Upper-Bench and Common-Bench, in point of appearance at the beginning of a Suit, take as followes.

In the Exchequer for the generallity, the Proces is a *Subpœna*, to which the Defendant may appeare either in perſon, or by his Attorney, ſo that he put in Pledges to anſwer the matter; and if the appearance be had by Attorney, then the Defendant ſo appearing, his Sureties muſt be bound by Recognizance, with condition, that he ſhall render, *&c.* if the Defendant in the Suit for whom they ſtand bound, be condemned, *&c.*

This Baile or Recognizance muſt be alwayes taken before a Baron in the Court, and not in his Chamber, as is in other Courts moſt uſuall.

Except

Except the matter be of great moment, one Surety will be ſufficient.

Where the Plaintiff is pleaſed, the hand of the Defendant may be ſufficient, whether it be a perſonall appearance or by attorny.

Here followes the Chardge of the Subpæna, *together with the appearances upon it in the* Exchequer.

	l. s. d.
IN*primis*, The *Subpæna* and ſeale,	2-7.
The Appearance upon it	0-8.
The Recognizance,	0-8.
The copy of the Information at eight pence the ſheet.	
For entring the baile if it be in a generall Iſſue,	5-0.
If in a ſpeciall iſſue for every half roll	16-4
To a Councellour for drawing the Plea in bar,	10
For the Attorneys Fee,	3-4

Where there is an Inrollment made in the Exchequer, *the fees are as follow.*

	l. s. d.
TO the Baron before whome the acknowledgement is made	0-6-8.

To

To the Master of the Office for his hand, 6-4.
For every Roll, 3-4.
For the Attornyes fee, 3-4.

Where an under-Sheriff is to passe his account in the Exchequer, *the charge is as followes: some difference there may be, as the account may lie; but not much.*

l. s. d.

FIRST, For the *Tales* upon payment of proffers, 0-2-8.
For the entry of the same *Tales*, 0-1-4.
Where the Sheriff is dead, for the *Diem clausit extremum*, whereby upon account, execution is to be returned, 13-4.
For the warrant of Attorny, 1-0.
For the entry thereof, 0-8
For the Ushers fees, and the Poor mans box, 13-4
To the Controller of the pipe, 16-8.
To him more, in regard of, *&c.* 3-4
To the Clark to the Controller for summons in regard of, *&c.* 5-0
To the Clark of the pipe in part of his fee, 1-0-0.
To the Lord Treasurers Remembrancer 13-4
To the forraine Opposer for charging of the green wax, and making the Scrowle thereof, 1-6-8.
To him for allowance of the wages of the Justice of the peace, 18-0.

To

To the Clark of the Eſtreats for the Portage of Books. } As you can agree.

To the under Clark of the Pipe for the like. } In like manner.

For the Preſident for the forrain account. } In like manner

The fee in regard of the Juſtices of Aſſize for their dyet, 10 l.

To the Attorney for the entry thereof and other Petitions, 2 l.

To the ſaid Attorney for his ordinary fee, for the whole yeare to receive the VVrits and Precepts, *&c.* 1 l 6 s 8 d.

To him in regard of, *&c.* for every Term during the account till finiſhed, 3 s 4 d.

To his Clark in regard of, *&c.* 10 s.

The copies of the Sheriffs, Seiſures, according to the number of them.

The old ſeiſures for each, 1 s.

The new ſeiſures for each, 1 s.

To the Clark in regard of, *&c.* 3 s 4 d.

To the Remembrancers Office for each thereof, and for ioyning the Tales of Proffers, 3 s 4 d

On the Lord Treaſurers Remembrancers ſide for the like, 3 s 4 d

For allowance of the ſame Tales of payments of money in the Receit of the Exchequer, 1 s 4 d.

For the ioyning of the ſame, ..

For allowance of the ſame, 1 s

For every day that is given to the Sheriff, in reſpect of his Accounts, 6 s 8 d.

For the entry thereof, 2 s.

To the Uſher for Proclamation, when the Sheriff is ſaid to be caſt out of the Court, 2 s 6 d.

For the *Quietus eſt*, the making and allowing of the ſame, 1 l.

For the Baron for his fees, for the taking and allowing of the forrain accounts, 6 s 8 d.
To the ſame Baron for examining the Sheriffs Schedule, 6 s 8 d.

The ordinary charge of paſſing another Account.

FIrſt for the Delivery and Receit of three Certificates, 1 s.
For delivery of the Kings part of the Books of Extent to the Auditor, 6 d.
To the Auditors man for a Bagg, 6 d.
For a Warrant of Attorney, 8 d.
To the Teller for receiving of the money, and making a Bill thereof, 4 d.
To the Auditors man for allowing the Certificates 1 s. 6 d.
To the Auditors man for ingroſſing the Accounts 4 s.
To the Barons man for receiving and allowing the Warrants of Attorney, 2 s.
For entring the Accounts on the Kings Remembrancers ſide, 1 s.
For the like entry with M. 1 s.
For joyning of their two Tales, 8 d.
For the *Quietus eſt*, 3 s 4 d.
For entring of the *Quietus eſt*, 2 s.
For the Attornies fee, 3 s 4 d.

Thus much ſhall ſuffice to have ſpoken of the Exchequer and of his Proceedings, and Fees relating to Sheriffs.

In the next place take the fees of the Sheriffs themselves, as in the execution of their Office.

IN *primis* for the return of a *Nichil*, or *non eſt inventus*, 4 d.

But in *Scire facias* they take, 1 s.

For making a Warrant upon ordinary Proces, if it be directed to the ordinary Bailiffs, then for every name, 4 d.

In many Counties they take far more, in ſome 16 d. in ſome more.

If the Warrant be directed to a ſpeciall Bailiff or Bailiffs, then for every name, 2 s.

For the Arreſt of every Defendant, 1 s.

This ſhould be paid by the Plaintiff.

For making the Bond of appearance, wherin the Defendant with his ſureties is bound to appeare in Court, at the day of the return of the Writ, 4 d.

They take 12 d. and more in ſome places.

For the return of a *Cepi corpus*, 4 d.

For the return of an Exigent, 1 s.

For the return of a Proclamation, 1 s.

For the return ſo a *Venire facias*. 1 s.

They now take in moſt places, 2 s.

For the return of a *Habeas corpus*, or *Diſtringas*, 2 s 4 d.

For a Replevin either in the County or otherwiſe, 2 s.

For the return of a *Recordare*, 2 s.

For the return of an *Accedas ad curiam*, 2 s.

For the return of a *Diſtringas nuper vicecomitem*, 2 s.

For the allowance of a *Superſedias*, if it be after the return of the Exigent, 2 s.

They pay more now in many Counties.

For the Executing of a Writ of inquiry of waſte.
For the Executing of a Writ of inquiry of Damages in Treſpaſſe.
Treſpaſſe upon the caſe, *&c.*
For the executing of a *Liberate* upon a Statute or Recognizance.
For the Execution of an *Habere facias poſſeſſionem*, or *ſciſinam* upon an *Ejectione firmæ*, a Writ of right, of making Partition, *&c.* of Dower, *&c.*
As you can make agreement with the Sheriff.

For the Executing of an *Elegit*, and for the inquiry upon it.

For the Executing of a Writ of forcible Entry, or holding with force, whereupon the Party moved, is to be reſtored by the Sheriff to his Poſſeſſion.

For the executing of a writ of Inquiry upon aſſault and Battery.

Upon a Reſcous, and many other too long here to inſert. The like as before

For the returning of a *Mandavi Ballivo Libertatis*, *&c.* 4 d.

Upon the ſerving of an Execution for money, either Debt or Damages.

The Sheriff hath poundage allowed him, and is a generall Rule allowed by a Statute in Queen *Elizabeths* time, ſee the Statute what it is.

There are many other fees incident to the Sheriff in many Actions and otherwiſe, which in reſpect the Actions themſelves are moſt of them out of uſe, are not ſo well known; and indeed a man had need be well experienced in the Office of an Under-Sheriff, to know both what fees he ought to receive, and what he ought to pay.

The

The Court of Upper-Bench comes next to be treated of, wherein we ſhall be the briefer, in reſpect that many Actions treated of at large before, in the Court of common Bench, are here alſo brought, and all that differences their proceedings, is for the moſt part matter of forme.

THE Court of Upper-Bench conſiſts of a chiefe Juſtice and three other Judges.

The ſubordinate Officers are as follow.

The chiefe Clark of the Court, or Maſter of the Upper-Bench Office, whoſe place is executed by his Secondary for the moſt part, or his Clarks under him, who write all Pleadings and Declarations, and other Proceedings upon Record, and are accountable to him for the ſame.

His Deputy alſo ſignes all *Latitats*, which is the firſt Writ whereby a Suit is commenced: And Writs of *Alias*, *Plures*, *Capias*, *Elegits*, *Habeas Corpus*, *Procedendo*, *Habere facias poſſeſſionem*, *Certiorare*, *Diſtringas Ballivos*, *Diſtringas* againſt late Sheriffs, *Returno Habendo*, *Capias in Withernam*, ſecond deliverance, and ſome others. He alſo keeps the remembrances of all Records, whereby you may finde out any Record with little trouble, eſpecially if you know the Term when it was entred, and the Attornies name: and alſo all Writs returned, and *Poſteas*, and Writs of Errour are kept and filed in his Office; and alſo common Bailes and eſpeciall Bailes, after they are excepted of by the Plaintiff or his Attorney, are likewiſe filed and entred upon Record in his Office.

Secondly, The *Cuſtos brevium*, his Office is to file

all originall Writs, and other Writs, wherein you proceed againſt any perſon you intend to outlaw. And alſo makes up all Records of *Niſi prius* for tryals at the Aſſizes in the ſeverall Countries, and hath ſeverall Clarks under him, who write the ſame; but many times the Plaintiffs Attorney or the Defendants Attorney, if you go to tryall by *Proviſo*, write the ſame, that he may diſpatch his Clients buſineſſe the ſooner, for which you pay for every Preſſe, which is to contain ſixty lines, 6 s 6 d.

The Secondary to the chiefe Clark, he alwayes attends the ſitting of the Court, for to examine buſineſſe, which is referred to him by the Judges; and afterwards makes his report thereof, how the caſe ſtands: He alſo ſignes all Judgments and Taxes, coſts thereupon, and gives all rules to anſwer and reply, and to go to tryall by *Proviſo*, and many other; and uſually reſolves all doubts and queſtions of the other Clarks: And if any difference ariſe between any of the Clarks, for matter of practiſe; it is uſuall with them that are faire practizors, to refer the ſame to him for to determine, and not to trouble the Court with unneceſſary motions, and expend their Clyents money in vain, which may that way be ſaved.

The Clark of the Papers, his Office is to make up all ſpeciall Pleadings and Demurrers, which the Plaintiffs Attorney moſt commonly ſpeakes for, and afterwards by vertue of his Office, gives a Rule upon the ſide of the Paper-Book, for the Defendants Attorney to bring the ſame to him again, to be entred within foure dayes, or elſe Judgment to go by default.

Keeper of the files of Declarations, with whom after they are ingroſſed, in Parchment, and continued on the back, from the Term you declare, till it come to an Iſſue are filed. Keeper

Keeper of the Signe and Seale for the Bills of *Middleſex*, who keeps a Book, containing the Plaintiffs and Defendants names, and where you may ſearch for any appearance, or for any Writ that is taken forth.

The Clark of the Rules, whoſe Office is to attend the Court, and take ſhort notes of all rules and orders that are made in Court (except thoſe which belong to the Crown Office) and afterwards drawes the ſame up, and enters them in a Book at large, for which you pay 8 d. and for the copy of every Rule 4 d. if it be of the ſame Term, otherwiſe you pay 8 d. He alſo files all *Affidavits* that are uſed in Court, and hath the benefit of making Copies of them, for which you pay for each Sheet 4 d. and with him you are to give all Rules of courſe, as Rules upon *Cepi corpus*, *Habeas corpus*, for a *Procedendo*, *poſſeas*, Writs of inquiry, and ſuch like.

Phillizors, one for each County in *England*, who make out all Writs, wherein you intend to proceed by Originall, and ſo to the Outlawry (except the Originall it ſelfe which you are to beſpeak of the Curſitor of the County, where you intend to lay your Action, in ſuch manner as you beſpeak Originals, which are made in the common Pleas. And they have the benefit of all Writs and entries thereupon, and allow the chiefe Clark nothing for the ſame.

The Marſhall of the Upper-Bench, who hath the cuſtody of all Priſoners, who are ſued in the Court, like to the Guardian or Warden of the Fleet, which is a Priſon, properly belonging to the common Bench and Chancery; and every one that is ſued and Arreſted in this Court of Upper-Bench, is ſuppoſed to be in Cuſtody: for you cannot declare againſt any man, who is arreſted upon mean Proceſſe, in any County or City, and he remain in Priſon there, for

want of Baile, untill he be removed by a *Habeas corpus*; and alwayes either he himſelfe or his Deputy or Servants, attend the Court for that purpoſe to take Priſoners, who are committed to their Cuſtody.

Clark of the Errours, he allowes all Writs of Errour, and makes *Superſedias* thereupon, into what County you pleaſe to have them.

Criers, who alwayes attend upon the Court, either to call *Non-ſuits*, give Oathes to witneſſes, and Jury-men of tryals, or to any others whom the Judge ſhall direct, and at the end of every Term they do adicurn the Court.

Porter, who is to bring the Records out of the Office, when they are to be uſed in Court.

This Court of Upper-Bench holdes Plea in all Actions of Debt, Detinue, Covenant, Account, and all Actions of the caſe, either upon promiſes or for ſcandalous words, or for ſpeciall nuſance, *&c.* Trover and Converſion, and many other like, *&c.*

The courſe of proceeding there is by way of *Latitat*, as their firſt proceſſe, if the Action to be brought, or the Party to be arreſted in any other County then *Middleſex*.

If in *Middleſex*, then you take out a Bill of *Middleſex*, with any Clark of this Office, for which you pay 1 s 6 d. and then you are to carry it to the under-Sheriff of *Middleſex* his Office, who is to make out a Warrant upon it, for which he hath 4 d. and then you imploy what Bailiff you think fit, for the Arreſt, except your Warrant be directed to the Bailiff of any particular Liberty, and then you are to imploy one of his Bailiffs.

If it be a *Latitat*, it ſuppoſeth a Bill of *Middleſex*, and that the Party cannot be found in the County of *Middleſex*, as it appeares by the latter end of the writ, where it is ſaid, The Sheriff of *Middleſex* returns, that

that he is not found within his Bayliwick, but that he lyes hidden in another County; and therefore command is given to the Sheriff of that other County, that he take him, *&c.*

This Writ or Bill of *Middleſex*, I conceive, is in the nature of the Originall in the common Pleas, which warrants the *Capias*, and happily may have very anciently been in uſe to that purpoſe, for that otherwiſe twere vain to inſert thoſe words of the Sheriff of *Middleſex*.

The form of a Latitat *is as followes.*

Latitat.

THE Keepers of the Liberty of *England*, by authority of Parliament, to the Sheriff of *E.* greeting. Whereas we have lately commanded the Sheriff of the County of *Middleſex*, that he ſhould take *A. B.* if he might be found in his Bayliwick, and him ſafely keep, ſo that he might have his Body before us, in the Upper-Bench at *Weſtminſter*, the thurſday next after fifteen dayes of *Eaſter*, to anſwer *C. D.* in a Plea of Treſpaſſe; And the ſaid Sheriff of *Middleſex*, at that day returned unto us, that the ſaid *A. B.* is not found in his Bayliwick; whereupon on the behalfe of the aforeſaid *C. D.* in the Court before us, it is ſufficiently teſtified, that the ſaid *A. B.* doth lurk and ſculk in your County; therefore we command you, that you take him, if he ſhall be found within your Bayliwick, and him ſafely keep, ſo that you may have his Body before us in the upper Bench at *Weſtminſter*, on Wedneſday next after three weeks of *Eaſter*, to anſwer the ſaid *C. D.* in the Plea aforeſaid, and that you have there then this VVrit; witneſſe *H. Rolle* at *Weſtminſter*, the ſeventeenth day of *Aprill*, in the yeare of our Lord God 1651.

This

This VVrit is uſually 4 s 1 d. ſome take 5 s 1 d. And if you cannot arreſt the Party upon this, then you may have it renewed as followeth.

Alias Capias.

THE Keepers, *&c.* To the Sheriff of *L.* greeting: VVe command you, as formerly we commanded you, that you take *A. B.* if he ſhall be found within your Bayliwick, and him ſafely keep, ſo that you may have his body before us in the Upper-Bench at *Weſtminſter*, on Satterday next after the Morrow of the Aſcenſion of our Lord, to anſwer *C. D.* in a Plea of Treſpaſſe. And that you have there then this writ; witneſſe *H. Rolle* at *Weſtminſter*, *&c. Wightwick.*

This VVrit is x i i i d. bnt they uſually take 2 s 1 d.

The *Plures Capias.*

THE Keepers, *&c.* To the Sheriff, *&c.* VVee command you, as many times we have commanded you, that you take *A. B. &c.* (as in the VVrit next before.)

This VVrit is likewiſe x i i i d. but they take 2 s 1 d.

Bill of Middleſex.

Middleſex ſſ. It is commanded to the Sheriff, that he take *A. B.* if, *&c.* and him ſafely, *&c.* So that he have his Body before the Keepers of the Liberty of *England*, by authority of Parliament, in the Upper-Bench at *Weſtminſter*, on VVednesday next after the Month of *Eaſter*, to anſwer *C. D.* of a Plea of Treſpaſſe, and that he have here then this Precept, *&c.* by Bill. *Wightwick.*

Theſe VVrits you may have renewed every Term, untill

until you get the party to be arrested. But if the *Latitat* remain unrenewed for five Termes, after you have taken it out, then you must have a *Latitat de novo*, for that you cannot renew the old.

Upon any of these Processes, if any of the Parties to be arrested, dwell within a Liberty, you must get the Sheriff to return a *Mandabo Ballivo* to your Processe, and upon that the course is to have a *Non omittas, &c.* For which you pay 2 s 4 d.

Where upon this, or any the other Writs, the Party or Parties be arrested, and have put in bond for his appearance to the Sheriff, you must pay the Sheriff 4 d. and he will return you a *Cepi corpus*, upon which if the Party do not appear at the return of the Writ, you may give the Sheriff a rule to bring in his Body, on pain of 40 s. *&c.* which costs 4 d. and then if he do not come in and appeare, you may have a *Habeas Corpu* upon the *Cepi corpus*, which costs 2 s 4 d. If the Sheriff will not return this writ of *Habeas*, you may amerce him as before; if he doth return the VVrit and brings not in the Body, he can return nothing but a *Languidus in prisona*, and upon that, you may have a *Duces tecum licet languidus, &c.* upon the like price; or else after the Party is arrested, you may have a *Habeas corpus*.

At the return of all or any of these, you may amerce the Sheriff, and he shall pay it after those rules given in the Upper-Bench.

If you will extreat your Amerciaments into the Crown Office, the charge of every rule extreated is 2 s 4 d. unextreated 4 d. And in this course you may both amerce the Sheriff, and prosecute till such time as he doth appeare; but if there be any great Amerciament, the Defendant will appeare, for feare the Sheriff sue his Bond: And after the Amerciaments are returned into the Crown-Office, if they be

be not certified and returned into the Exchequer, which is once in every halfe yeare, where they are extreated before that time, if you be ſued upon the Sheriffs bond, you may upon motion of the Court if the Plaintiffs Attorney (to whoſe Client the Sheriffs Bond is commonly aſſigned) will not conſent otherwiſe, that you are content to appeare, as of the ſame Term the firſt Writ was returnable; and to accept of a Declaration, and not to delay the Plaintiff in his Suit: the Court will uſually order the Suit upon the Sheriffs Bond to ſtay, or if the Amerciaments be extreated, then upon the ſame offer, and alſo to take of thoſe Amerciaments, the Court will order the like.

And when any one intends to appeare, he muſt file a Baile with the Maſter of the Office, fairely written in Parchment, the forme whereof is s followes.

If it be a common Baile thus,

A. B. of *C.* in the Countie of *D.* Yeoman, delivered into Baile upon a *Cepi corpus*.

To *John Doe* of *London*, Yeoman, and *Richard Roe* of the ſame, Yeoman, at the Suit of *E. F.*

If ſpeciall Baile upon a *Habeas corpus*, then you muſt ſay (ſuch a one) naming the Plaintiff is delivered into Baile upon a *Habeas corpus*, to ſuch perſons, naming his Baile, (inſtead of *John Doe* and *Richard Roe*) at the ſuit of the Plaintiff, in the plaint not naming the Defendant, as in the common Baile, which muſt alſo be filed with the Maſter of the Office.

In what caſes you are to require, and may ſtand upon good Baile.

IF the Defendant do appeare, and he ſtand indebted to your Client, either by Bond, Bill, or otherwiſe, to the value of 20 l. or 10 l. you may force him to put in good Baile, if you miſtruſt his ſufficiency. But if it be in any Action of the caſe, for words, though the Party be nothing worth, and you are likely to recover great Damages, yet can you very hardly hold him to good Baile: yet in ſome caſes it hath been obſerved, that good Baile was required, as where one had made a Libell againſt another who was a Magiſtrat.

In an Action of *Eiectione firme*, and in an Action of Treſpaſſe, good Baile is not inſiſted on, nor required; except in ſome ſpeciall caſes, then the Court will order that there be eſpeciall Baile.

Nor is there good Bail required againſt Executors or Adminiſtrators, in any Action brought againſt them; unleſſe in ſuch caſe where you can directly prove they have waſted the Goods of the Teſtator.

If Baile be put in, either common or ſpeciall, at another mans Suit, a ſtranger may upon this Baile put in a Declaration, but then he muſt declare of the ſame Term the Baile was put in, which is not uſed in the common Bench. But the Party at whoſe Suit the Defendant was arreſted, may declare the next Term after the Defendants appearance upon the Baile.

But if it be eſpeciall Baile that he put in, no ſtranger ſhall take the benefit of it, although he declare of the ſame Term.

If the Defendant appeare in his proper perſon,

you

you muſt declare within three dayes, otherwiſe he will have coſts.

If you have declared, and do not call for anſwer, nor enter the Action within three Termes, after the appearance of the Defendant, the Plaintiff ſhall be *Non-ſuited*, and the Defendant ſhall have coſts.

And if you arreſt one in the County, upon mean proceſſe, and he is in the Sheriffs cuſtody there for want of Baile, for the ſpace of three Termes, and you do not remove him into the cuſtody of the Marſhall, where he muſt be, before you can declare againſt him, the Party arreſted may have a *Superſedias* and file common Baile.

The Declarations are uſually drawn by the Clarks of the Office, for they that are Clarks of the Office, are to do the buſineſſe of thoſe which are Attornies at large, and their names are only uſed as Attornies; but thoſe Clarks are in right of their being Clarks of the Office Attornies of the Court.

Their manner of practiſe is ſomething different, in reſpect of the delivery of Declarations, from that in the common Bench.

In the common Bench, the Plaintiffs Attorney or Clark, hath the benefit of both the Copies of the Declaration, both on the Part of the Plaintiff and Defendant.

But in the Upper-Bench, the Declaration being drawn by the Plaintiffs Clark, the Defendants Clark calleth for it, or elſe it is delivered unto him, and he maketh a Copy of it, and hath the benefit of it, and then the next Term after, or ſo ſoon as the Plaintiffs Clark calleth for anſwereh, is to plead or to confeſſe the Action, or let it go by default, *&c.*

Their Declarations that are drawn, they ingroſſe ſeverally in peices of Parchment, and upon the back of them they enter their continuances, from the Term

Term that is within written, unto the very Term that they either confeſſe the Action or plead to iſſue, and that the Iſſue be entred upon Record, and after Iſſue is joyned, many times they deſer the entring of the ſame, till the cauſe be tryed, which is otherwiſe in the common Bench, which is beneficiall both to the Plaintiff and Defendant, being they may in the mean time agree the buſineſſe, and ſo ſave that charge.

In their Declarations they begin with the name of the Plaintiff, and ſay, that he complaines of the Defendant, very ſeldome naming of what place, *&c.* unleſſe upon a Bond where the *Alias dictus* muſt be obſerved, in the cuſtody of the Marſhall, *&c.* for ſo the Declaration ſuppoſeth every perſon they declare againſt.

When they come to mention the Bond, Indenture, or Bill, if in an Action brought upon any ſpecialty, there they have (*Profert hic in curia, &c.*) in the middle of their Declarations, whereas in the common Pleas they conclude their Declarations with it; at the cloſe of their Declarations they add underneath,

Pledges of proſecuting { *John Doe.* / *Richard Roe.*

Next that they add, *I. B.* for the Plaintiff, *C. D.* for the Defendant.

THE many and ſeverall Actions of the caſe before mentioned in the practiſe of the common Pleas, are much uſed likewiſe in the practiſe of this Court, and in thoſe Actions they may proceed to outlawry by originall, and ſo through their Philli-

zers Office; in which cases, or in trespasse, or trespasse of Assault and Battery, if a man be outlawed in that Court, he is halfe undone if he be a poor man; for besides that it costs him 6 l. 13 s. 4 d. or upwards to reverse the Outlawry, he must although he live 200. or 150. miles distant from *London*, come in person (if he be able) to reverse it, and besides must procure good Baile; and in case he be impotent that he cannot travell, then there must be *affidavit* made thereof, before a Judge, which done, he may reverse it.

One may proceed to Outlawry in this Court, as well as in the common Pleas, in all cases, except in these foure.

1. Debt, 2. Detinue, 3. Covenant, 4. Account; but it is seldome made use of but upon good occasion; that is to say, when the Defendant hath a good personall estate in Debts, Cattell, or Stock in his Grounds, and is hard to be taken and arrested: for otherwise Outlawries are but meer scare-crowes, to disable both the Plaintiff and Defendant, in putting them to unnecessary charge, whereas upon a *Latitat* you may procure a man to be arrested presently, and make him put in good Baile; which is all you can do upon an Outlawry, after three Termes space: And besides upon a *Latitat* you may declare against the Defendant, in as many Actions as you please; whereas in the common Pleas, you must have for every Action, one originall, and if it be a Debt which exceeds 40 l. you must pay as before is told you, 6 s. 8 d. fine, and if a 100 l. you pay 10 s. fine, and so proportionably; and as soon as you bespeak your Originall, before you have any benefit of your Suit, whereas no fine at all is paid in the Upper-Bench, and in the Upper-Bench the Plaintiff hath longer time to declare, then is allowed in the

common

Common Pleas (if the Defendant doe not appeare in perſon) and then you muſt declare within three dayes after.

When the Plaintiff and Defendant are at iſſue, the Defendants Clark hath the benefit (as before of making the Declaration) ſo of making the Copy of the Iſſue for the Defendant, which is otherwiſe uſed in the Common Bench.

If there be eſpeciall Pleadings in any Action by the Plaintiff or Defendant, which either comes to iſſue, or that there be a demurrer, then they carry the whole Book to the Clark of the Papers, who giveth a rule to the Defendant in the Margent of the Book, to ioyne in iſſue or in demurrer, and he maketh up the Books, and is payd eight pence a ſheet for the ſame, which is otherwiſe in the Common Pleas, for there the Plaintiffs Attorney hath that benefit.

The Clarks of the Office are to account with the Maſter of the Office, after the end of every Terme, for all Writs or Entries, *&c.* which they have had of that Terme ſo preceding.

After Verdicts, and that they have the *Poſteas* returned, and that the Maſter of the Office hath ſigned Coſts (which he doth as he doth all other buſineſſe by his Secondary) then they enter up their Judgements, every Clark his own, and ſo he maketh out his Executions, either againſt the body, which is commonly called a *Capias ad ſatisfaciend.* or elſe againſt the goods, which is commonly called a *Fieri facias*, or elſe againſt the Lands and Goods, which is called an *Elegit*; but if you once charge the body in Execution, you have no remedy againſt the Goods or Lands.

If it be an iſſue of any former Terme, that is entred upon the Roll, or of the ſame Terme, then if they will have a Record of *Niſi prius*, they muſt have

it made by the *Custos brevium* of that Court, who keapeth particular Clarks for that purpose, for they are to pay him for them, although for expedition the Attorney or Clark most usually makes them himselfe, and then the *Custos brevium* seales them.

This Court of Upper-Bench holdeth Pleas of the Crown, and to that purpose there is an Office called the Crown Office, and the Master of it called the Clark of the Crown; and here may be brought Inditements for all manner of Treasons, Murther, Felony, Breaches of the peace by Battery, *&c.* Breach of the good behaviour, for periury, all publick Nusances, appeales in case of murther may come, and here likewise Informations upon penall Statutes are brought, and here illues out *Certiorares*, to remove Inditements from private Sessions, and hither are all Convicts certified.

They have belonging to this Office a Secondary, who sits in Court and takes notice of what Rules are made on the Crown side. They have likewise severall Attornies of that Office, who have the businesse of the Country, as to that Office divided amongst them, who intermedle not with any thing relating to the Court, other then in their owne Office.

How to sue upon a Statute Staple.

IF you would sue forth Execution upon a Statute Staple, go to the Clark of the Statutes, and shew him your Statute, and he will make you thereupon a Certificate, which being made and sealed by him, carry it to the Clark of the Crown, (which is the Office whence all parents, speciall illue forth) and upon the Delivery of the Certificate to him, he is to make you your Extent, which you must after deliver unto

unto the Sherif of the County where the Land lieth, who will by vertue thereof impannell a Jury to inquire and extend lands, Goods, and Chattells of the Cognizer, and may by vertue thereof apprehend the Body if, *&c.* The Lands being thus extended into the Kings hands, the Sheriff may keep untill you bring your *Deliberate*, which you are to have (upon your extent returned) from one of the Clarks of the Petty bagg; but it behooveth you to be very carefull how you sue forth of your *Liberate*, and that you do it not before you have fully informed your self what Lands or Goods there are in any other County, that you may extend, whereby fully to satisfie your Statute, for if you once execute your *Liberate*, upon that which was first extended, you shall never have execution of more, although you make an after discovery: And you are to deliver your statute into the petty Bag office, before they will make you your *Liberate*.

How to sue upon a recognizance acknowledged before one of the Masters of the Chancery.

WHERE you will sue upon a Recognizance, you must bring it to one of the Clarks of the Petty bag office in Chancery and he will make you out two *Scire facias*, directed to the Sherif of *Middlesex*.

The first returnable of a return past, and the other bearing *Teste* of the return of the former; and returnable at a day to come, which you must get the Sheriff of *Middlesex* to return, and having them returned; you are to bring them back to the Clark of the

Petty bag Office, and then retain one of the Clarks for you and give the Defendant day to appear.

At which day if he appear, the Plaintiff is to declare, and the Defendant is to answer, and so proceed to issue, and upon the issue ioyned, you may have the whole proceedings ingrossed in parchment, and by *Mittimus* sent into the upper Bench orcommon Pleas, or else the Lord Keeper, or Lords Commissioners for the great Seale, for the time being, may deliver it so ingrossed into either Court without *Mittimus*, which is said to be delivered, *Propria sua manu*, where the issue shall be tried and Judgment given, for in the Chancery no issue can be tryed; but if the Defendant appear not, you shal have execution by default, which course is indeed most usuall.

How to prove a Will, in Case the party be present, the Inventory not exceeding forty pounds.

FIrst, you are to bring in your Will, under the hand of the Testator and Witnesses names, and take oath, that that is the last wil for ought you know, and in case the party live in the Country, there must a Commission issue forth to that purpose, which being returned, you must retain a proctor, and he will sue it out for you, the charge followes, but is alterable according to the length or shortness of the Will.

	l.	*s.*	*d.*
Inprimis, for regesting of the will,		1.	6:
For ingrossing the will		6.	0.
For the Register, for his hand to the same		12.	0.

For

For the Seal and probate of the will, 6. 8.
The Proctors fee and the prox. } 4. 8.
For proving the will. }
For Ingroſſing the Jnventory } according as you
and exhibiting the ſame. } can agree.

Theſe fees would be far leſſe, could the Regiſters Clarks be confined to walk by what the Statute directs, and in ſome very ſhort wills they are leſſe then what is above ſet down.

The Dutchie Court.

THis Court before the Sale formerly made, and the large gants of the Dutchie lands, was much uſed in relation to ſuits between the Tenants of thoſe Lands, and alſo againſt accountants and others for the Rents and profits of the Lands, and is a court of Record, wherein are Pleas both reall and perſonal, as alſo mixt pleadings, relating to the dutchie Lands.

The Chancellor of the Dutchie is the cheif Judge of this Court, and next to him the Attorney of the ſaid Court, who in all difficult caſes in point of Law is uſually aſſiſted by two Judges of the common Law out of one Court or other; to decide the matter or queſtion in Law.

There is one cheiſe clark or Regiſter of the court, to whoſe office it properly belongs to have the Keeping of all the Roles and Records of the court, and alſo of the proceedings therein.

There are divers Auditors of this Court, of which there are two more eſpeciall then the reſt. The one, whereof his Office extends to all the Dutchie Lands on this ſide *Trent*; and the other for the Lands beyond *Trent*. To thoſe Auditors doth belong the kee-

ping of the Kings Evidences, as Leaſes and Grants of the Dutchy Land, as well of the Poſſeſſions and Copy-hold as Fee-ſimple and Fee-farm.

Although there be divers Surveyers for the Dutchy Land, for the ſurveying of it, yet do they not keep any Record to that purpoſe, unleſſe ſome ſhort draughts of their own framing.

Thus much for Courts of Record at *Weſtminſter*, which are for the common Law practiſe; come we now to the Court of Equity, which in many caſes abates of the rigour and ſeverity of the common Law, and is called,

The high Court of Chancery.

IN this Court the Lord Chancellor or Lord keeper of the great Seale, were formerly, and now the Commiſſioners of the great Seale are the chiefe Judges: And in this Court, they, and in their abſence, the Maſter of the Rolls, do make Orders and Decrees.

The ſubordinate Officers of this Court are many.

The twelve Maſters in Ordinary, which are aſſiſtants to the Commiſſioners, and ſit with them, and to whom references are made, and before whom *Affidavits* are made, and Deeds acknowledged, and Recognizances, *&c.*

The Regiſter of the Court who hath divers under him, that ſit in Court and take notice of all Orders, Decrees made in Court, and accordingly afterwards draw up theſe Orders, and enter them and file them.

The ſix Clarks, in whoſe Office all proceedings upon Bill, and anſwer unto the very Decree, and after Decree are acted, and from whom likewiſe iſſue ſome

Patents;

Patents; as for pardon of men for chance-meddley, Patents for Embaſſadors, Commiſſions for Bankrupts; and theſe by their Clarks, of which each ſix Clark keeps a ſet number.

The Curſitors of the Court, who were incorporated by Queen *Elizabeth*, by the name of the foure and twenty Curſitors, amongſt whom the buſineſſe that lyes in the ſeverall Shires, is ſeverally diſtributed. Theſe make all original Writs in the Chancery, which are returnable in the common Pleas, and all VVrits of Entry and Covenant.

The Regiſter is a place of great note in this Court, and hath ſeverall Regiſters under him, who ſit in Court by their turnes, and take notice of all orders and decrees made in Court, and accordingly draw up the orders, to which you muſt have a Regiſters hand, and then you muſt enter it there, and in that Office likewiſe they file the Reports of the Maſters.

The Maſtes of the *Subp na* Office. The Clark of the *Affidavits*, where you file ſuch *Affidavits* as you uſe in Court.

The clarks of the Petty Bagg, who have many clarks under them, and theſe clarks have much variety of buſineſſe that comes through their hands, and requires very much knowledge and experience for the managing of.

This Office hath the making out of all Writs of Summons to the Parliament.

To this Office are all Offices that are found *Post mortem* brought to be filed.

In this Office are all pleadings of the Chancery, concerning the validitie of any Patent or other thing whatſoever, which paſſeth the great Seale.

And theſe Pleadings were formerly in Latine, although moſt of the reſt of their Proceeds were in engliſh.

If any queſtion ariſe about the acknowledgment of any private Deed between Subiects, which is acknowledged in Chancery, before the Lord keeper the Maſter of the Rols, or any of the Maſters in Chancery.

All Statutes and Recognizances taken before any Officers of this Court, to that purpoſe deputed, are here proſecuted and tranſmitted hither.

In theſe Offices, are all Suits for or againſt any perſon priviledged in the Court.

It is likewiſe a hand whereby to tranſmit divers things, from the riding clark and the Inrolement Office, to the chappell of the Rols.

The Examiners are Officers of this court, who take the Depoſitions of Witneſſes, and are to examine them, and to make out copies of the Depoſitions.

There are likewiſe clarks of the Rols, who ſit conſtantly in the Rols to make ſearches for Deeds, Offices, *&c.* and to make out copies.

The Uſher of the Court, who hath the receiving and cuſtody of all Monies, ordered to be depoſited in court, and payeth it back again by order.

The Serjeant at Armes who carryeth the Mace before the Commiſſioners, and to whom any perſons ſtanding in contempt, are brought up by his Subſtitutes as priſoners.

The VVarden of the Fleet attends likewiſe this Court, to receive ſuch Priſoners as ſtand committed by the Court.

This court conſiſts of a double power, ordinary, as in the caſes of *Scire facias*, to repeale Patents in caſes of Traverſe, Endowment of a woman, and the like, and here in the court is limited, and confined to the Rules uſed in the common Law.

The other is extraordinary and unlimited, which is in caſes of equity, wherein releife is to be had by a Suit,

Suit, here by way of Bill and anſwer.

By the power of this court, are iſſued forth commiſſions for charitable uſes, Bankrupts, and Sewers.

Here in this court in ſome caſes, commiſſions have been granted to examine waſtes, to ſet out meet wayes for paſſages; to prove a Childe legitimate, to prove cuſtomes, and to examine VVitneſſes, *in perpetuam rei memoriam.*

It proceeds by way of Bill and anſwer, in many caſes this court will give releiſe againſt, beſides and beyond the rules of the common Law, ſome whereof follow. As where a charge lyes upon one man alone, by the common Law, where in equity others ought to contribute a part to this charge, here in this caſe the court will give reliefe.

So likewiſe will the Court releive one againſt another who hath falſified and broken his truſt with him.

It gives releiſe againſt the extremity of an engagement, where either the engagement is without any conſideration, unreaſonable, diſhoneſt, or diſcharged; or where there hath been either fraud, force, or the like uſed to procure the thing to be done.

Where by Law a man cannot be compelled to performe an agreement, this inforces it.

It inforces the enrollment of a Deed, if need be.

This Court will reſtraine other courts that take upon them a greater Juriſdiction then properly they have, and removes the Suit into this Court, which is done by *Certiorare.*

This Court will reduce the generall cuſtomes of a Mannor to a certainty between the Lord and Tenants, or the Tenants themſelves.

It ſerves to recover Land or Money given to charitable or pious uſes, and miſimployed.

It

It inforces the Husband to give his VVife Alimony.

Where Creditors are unreasonable, this Court inforceth them to take a reasonable composition of the Debtor, he being disabled.

Where Freehold or Copyhold Land are confounded, it will distinguish it, or if it be lost it will give a recompence for it.

This Court will ascertaine the Fines of Copyholders.

This Court (where Executors or others have money in their hands, there to lye long) inforces them to give security, or intereſt for it.

This Court will inforce the recovery of a Legacy, or force the performance of a Will.

It serves for the recovery of ones Land, debt, or duty, although he have lost the Conveyances or Writings, by which he should make his title to it, or otherwise be without remedy at Law for it.

It inforces he that hath sold Land, and taken money for it, assured by defective Conveyance, to make the same perfect and good.

It will inforce a Tenant to attorne, to perfect an Assurance.

In these and such like cases this court of Chancery doth alwayes, or for the most part, give releife, as you may see more at large in *Tothills* and *Caries* Reports.

In some other speciall cases likewise this Court doth exercise a power, as to prevent the disinheritance of an Heire, or restore it.

To avoid the extinguishment or suspension of rent or common.

To prevent an occupancy.

To avoyd the barr of an Action, by the Statute of 21 *Jacobi*, of Limitations

It

It will order the incloſure of Grounds or Lands that are common, give releiſe againſt the turning of a Watercourſe from a Mill, ſo as there be any ſpeciall circumſtance in the caſe, otherwiſe it is very ſhie and tender in making orders in them.

But regularly this Court doth not give releiſe where the ſubſtance of the Suit by Bill and Anſwer tends to the overthrow of an Act of Parliament, made for publique peace and repoſe, or to the overthrowing any fundamentall point of the common Law, or to overthrow and take from other Courts their peculiar Juriſdiction, or the like.

In all ſuch caſes wherein the Plaintiff hath his remedy at common Law for the very ſame things, he ſhall not be releived here.

Where a promiſe is made to aſſure Land for a certaine ſum of Money, in this caſe the party may either ſue at Law for damages, or in Chancery for the Land it ſelfe.

The like caſe for a Nuſance, where the Law gives me damages, I may ſue here to have the Nuſance removed, or the thing it ſelfe reſtored: And yet there may be ſome ſpeciall circumſtances in the caſe, which may make the Court retaine it, as where a Suit is grounded vpon a VVill *Nuncupative*, Leaſe paroll, or long Leaſe, to avoyd VVardſhip, or to eſtabliſh perpetuities, or to defeat Purchaſors, or for Brokeage, or rewards to make marriages, or for bargaines at play, or wagers, for bargaines for Offices againſt the Statute of 2 *Edward the ſixth*, or upon contracts for Uſury, or Symonie, or if it be for Land not worth forty ſhillings a yeare, or for any thing elſe under the value of ten pounds, thoſe are regularly diſallowed here: And ſometimes upon notice taken hereof by the Court, upon motion or upon Affidavit onely, before the Cauſe comes to hearing it is diſmiſſed, but

if

if it ſtay longer till it comes to hearing, it is then diſmiſſed; yet there are ſome circumſtances that may make ſome of theſe retainable, as where the Suit for ſo ſmall a matter be for the poor of a Pariſh, or the like.

In ſuch like caſes as theſe the matter being heard upon Bill and Anſwer, and the proofs of witneſſes, the Court may (without any regard to forme or miſpleading, ſo as the truth, *Viis & modis* may be diſcovered) proceed to ſentence it according to Equity and good conſcience.

All perſons able in Law to ſue or be ſued, may in this Court ſue or be ſued.

Releif may be and is often given againſt or for an Infant in this Court, touching which matter theſe things are to be known.

As to ſuits againſt an Infant.

Firſt, An Infant hath been compelled to anſwer a bill in this Court, as in *Hares* caſe, *Hil.* 3. *Ja.* and *Mores* caſe, 11 *Caroli*, *Tothil*, 108. 109. And being but twelve years old was bound by a decree of this Court 37. *Eliz.* *Wadhams* Caſe, and upon a review decreed again, *Cromwells* cale *Mich.* 7. *Caroli*, and was committed to the fleet for diſobeying a Decree, 12 *Eliz.* *Tothil*, 108. 139.

Secondly, This Court may alſo if it pleaſeth, appoint an Infant Defendant, a Guardian to defend his ſuit, *Caries* Reports 38.

Thirdly, A copy hold was ſurrendred to the uſe of an Infant, for the Infant to pay an anuity to another at his full age which he refuſed; it was decreed he ſhould pay it, and the arrears thereof, *Sawyers* caſe, 9 *Eliz.* *Tothil* 107.

Fourthly, *Young* purchaſed Lands in the name

of

of *Maſon*, in truſt for himſelf and his Heirs, and dies, not declaring any determination of this truſt, procures *Maſon* to convey it to him being of kin; he conveys it to Infants, *C.* ſues here as next Heir, the court agrees, that if the benefit of the truſt did belong to *C.* that it ſhall be decreed to him, during the Minority, and then that the Infants ſhall convey it; ſee *Caries* Reports, 30.

Fiftly, A Mother conveyed her Leaſe to her Son in truſt, and after the Son conveyed it to his children Infants, and it was decreed againſt the Father and Children, becauſe done without any conſideration, *Tothil.* 98.

Sixtly, Between the date and ſealing of the conveyance of Land ſold, the Lord *Morley* paſſed it to an Infant, and it was decreed againſt the Infant and him both, 36 *Eliz.* Lady *Ruſſells* caſe.

Seventhly, The Father being Tenant in tail, ſells his intailed Land, and leaves as much Free-land to diſcend to an infant, the court ordered when he comes of age to pay the money given for the Land according to his Fathers Will, or elſe that the Purchaſer ſhall have the Free-Land. *Tothil* 184.

Eighthly, An Infant may by this court be compelled to give a diſcharge of money due to, and received by him, as in *Rayners* caſe, 13. *Caroli.*

Ninthly, Where one made an Infant Executor to prevent the payment of his Debts, and he was ordered by the court to pay them notwithſtanding, *Mich.* 9 *Jacobi Tothil* 108.

Tenthly, An Infant may in ſome ſpeciall caſes by this court be concluded by his agreement.

But regularly if an Infant be twenty years of age, and make a contract never ſo much to his advantage, the court will not conclude him, nor will the court decree againſt him by his conſent, or the conſent

ſent of his Parents, but in ſome ſpeciall caſes upon the Merit of the cauſe, *Mich.* 8. *Caroli in Chancery.*

A Father being about to convey ſome of his Land to his younger Son, and the Eldeſt Son promiſed to give the younger Son a hundred pounds if the Father would forbear it; in this caſe the Eldeſt Son being an Infant was ordered to ſtand to it, See *Stiles* his caſe, 2 *Caroli Toth* 95.

Eleventhly, A Surrender was made of a copy hold by an Infant, to the uſe of *J. S.* for mony paid, and no help could be had here, *Hughes* caſe *Tothil*, 180.

Twelfthly, If I take Bonds for my money in my childrens name that are Infants, I may releaſe the Debts, and this court will allow it, and forbid any ſuit upon them.

As to ſuits by, or for an Infant.

Firſt, He ſhall have the ſame releiſe upon a breach of truſt, fraud, or the like in this court as another man may have, notwitſtanding his Minority, *Tothil* 108.

Secondly he may ſue by himſelf or his prochein amy or Guardian, as the court will order.

Releif is often given by this court, againſt, or for a woman under covert Baron, touching which, theſe things following are to be known.

As to Suits againſt her.

1. Shee ſhall be compelled to anſwer with, or without her Husband, See *Caries Reports*, 100. 101; *Tothil.* 95. and 96. But more eſpecially, if he be out of

of the Land. And ſhee ſhall be bound by the decree of this court, as in *Weſtdeans* caſe *Tothil* 93. and ſhee may be committed till ſhe do obey it, as in *Stywards* caſe.

2. The Husband and wife were ordered to levy a Fine and perfect aſſurances, *Tothil* 93.

3. The Husband was ordered to give ſecurity, that the wife ſhould releaſe her right to land. *See Tothil* 92.

4. An agreement in ſome caſes will here be ordered, to conclude her where the merit of the cauſe requireth it: As if a man have two Tenements of his VVives Land, and they agree with the Tenant, that if he will ſurrender the one, he ſhall have three lives in the other, and he doth ſo, and the Husband die, the wife was ordered to make it good, See *Irelands* caſe 37 *Eliz. Tothil* 91. but regularly it is otherwiſe, And therefore where ſhe hath land with other Coheirs and ſhee with the conſent of her Husband, agree to take a thouſand pounds, to releaſe her Right, the Judges did certifie ſhee was not to be concluded, *Trin. 7 Jacobi Dockwraies caſe, Tothil* 98. yet in 10. *Jacobi Randalls* caſe was, that a ſingle woman did agree, and after her Marriage ſubſcribed her name with her husband to a later agreement, and was concluded by this later, by the courts order, *Tothil* 96.

But in *Slaters* caſe, 37 *Eliz. Tothill* 92. She and her Husband did article to forgoe her Joynture, for other recompence, and a Decree was made thereupon, (but without her conſent) in her Husbands lifetime, and after his death the court would not binde her to this agreement.

5. A leaſe of Land was made to friends, to her uſe, to begin after her Husbands death, and they two levy a Fine of the Lands, this will not bar them

in

in equity, *Trin.*15.*Caroli*, *Liſters caſe.*

A. made over his Leaſe for yeares, to the uſe of *C.* his VVife, after he and his VVife ſold the Land, and levied a Fine of it to *D.* The court ordered that the Purchaſer ſhould injoy the Land againſt the VVife, after her Husbands death, 2 *Caroli.*

One was ſeiſed of Land to the uſe of a feme ſole, who after took a Husband, and the Husband ſold the Land, the VVife had the Money, and ſhee and her Husband deſired the Feoffee in truſt to convey it, and he doth ſo, yet it ſeems the Court of chancery will not bar her of the Land, after her Husbands death.

The Court ordered the Husband and VVife to levy a Fine of mortgaged Lands, ſettled in her; the Lady *Griffins caſe*, 4 *Caroli.*

One did convey Land to the Husband in truſt, and he took the profit, and left it with his VVife, and ſhe married again; they two were ſued in this Court, and yet neither as Executor nor Adminiſtrator to her firſt Husband, as in *Acklands Caſe.*, *Tothill* 106.

As to Suits by and for her.

In ſome caſes ſhe may ſue her Husband, as for Alimony or maintenance, where they be parted, but ordinarily ſhe may not ſue her Husband, nor her Husband ſue her, *Sympſons caſe*, *Tothill* 94, 97.

Secondly, She hath been allowed to ſue without her Husband, and without his privity, eſpecially he being beyond the Sea, *Tothill* 95.

The Woman and her Husband agreeing to part upon difference, and he giving her a ſum of Money for her livelyhood, which was put into a friends hands for her, ſhe was allowed to ſue alone for this without her Husband. *Caries* Reports, 87.

Thirdly, She was admitted to ſue here for a duty releaſed by her Husband, gone beyond Sea, as in

Farewells

Farrwells Caſe, 32 *Eliz.* and *Bakers Caſe* 5. *Caroli Tothill* 95. as for her Jewels, the Earle of *Derbies Caſe*, *Tothill* 96. And yet ſhe having Goods, ſhe pretended to be her *Paraphronalia*, the Husband deviſed them, and it was here allowed to be good, and ſhe remedileſſe, as in *Davenports Caſe*, 5 *Caroli*.

Fourthly, If a VVoman had goods at the Marriage, and the Husband doth uſe and diſpoſe them all his life time, and then giveth them away, or maketh an Executor; this Court it ſeems will give her no reliefe, albeit the Husband leave never ſo great an Eſtate beſides, unleſſe they be Goods ſet apart and preſerved for her lively-hood, by ſome agreement or the like. *Tothill* 55.

5. A VVoman divorced from her Husband *Cauſa frigiditatis* ſued in this court for her Portion, her Father being alive, and recovered it, *Burrowes Caſe*, *Tothill* 81.

6. The VVife being parted from her Husband, and having an Eſtate to her ſelfe, was allowed by the Court to deviſe it by her will, *Mich.* 15. *Caroli*, *Tothill* 97. *Georges Caſe*.

7. If a Feme ſole being poſſeſſed of a Tearm, granteth it over, or a Tearm be granted by another to her own uſe, and then ſhe taketh a Husband and dieth, in this caſe, the Court ruled it to go to the Executor or Adminiſtrator of the VVife, and not to the ſurviving Husband.

A. being poſſeſſed of a Tearm, granted it upon a Marriage to be had between him and *R.S.* to *J.S.* her Brother to her uſe, and after Marriage *A.* dieth, and ſhe marrieth again, and then ſhe died, *J.S.* the Brother took out Adminiſtration of her Goods, and got the Leaſe, and the ſecond Husband ſued him in this Court for the Leaſe, but the Court would not releive him, *Paſch.* 32. *Eliz. Withernams caſe* in Chancery, *Cooke upon Littleton* 350.

8. *A.* being poſſeſſed of a Leaſe for yeares, granted it to *B.* and *C.* to the uſe of *A.* and his VVife, and afterwards *A.* granted away all his Intereſt to a Stranger, and the Court would not order it againſt the VVife, *Dyer* 369. *Cromptons Juriſdictions*, 65.

A. conveyed her Leaſe for yeares to Leſſees in truſt, to the uſe of her Daughters and Children: lyneally *A.* had a Daughter by one Husband who had Iſſue, and it died, and the Husband alſo, then ſhee marries again, then the Leſſees in truſt convey the Leaſe to the Mother and her ſecond Husband, and diſcharges the truſt, ſhe gives it to her Husband, and the Heire ſued for it.

It was ordered that the Husband and not the Heire ſhould have it: *Baskervile's caſe, Tothill* 95.

A VVidow being about to marry, to prevent her Husbands diſpoſall of the Land, conveys it to friends in truſt, who with the Husband do ſell it for valuable conſideration, and ſhee ſued in Chancery, and the Court decreed that the Purchaſer ſhould reconvey it to her, but ſhould firſt deduct all his diſburſements: *Fitziames his caſe, Tothill* 43.

A ſingle woman Widow or Maid, may ſue and be ſued here as another body, of which take ſome few caſes.

1. A VVidow of a Tenant in *Capite*, ſued here for her Dower, and had a commiſſion to ſet it out; as in *Wilds caſe*, 25 *Eliz.*

No woman ſhall recover dower of a truſt by this Court, *Mich.* 2. *Caroli. Kemps caſe.*

VVhen the woman cannot tell who is Tenant to the Land, ſhe may ſue (albeit her VVrit of Dower lieth at Law) to diſcover the Tenant, to know againſt whom to bring her Action: *Tothill* 99.

A. conveys Land to *B.* and his Heires, to the uſe of him and his Heires, in truſt for *C.* and his Heires, (*B.* having

(*B.* having then a VVife) *B.* dies, and his VVife ſued for Dower of the Land, *C.* ſued againſt her for reliefe here, and it was denied; yet the VVife of *C.* ſhould not have had Dower in this caſe, for a woman ſhall have no Dower of a truſt: *Hernes caſe, Tothill* 9.

So *A.* delivers *R.* 500 l. to put to uſe for him, and *B.* doth buy Land with it, and makes *A.* belive it is for him and in his name, but it was in his own name; *A.* it ſeems ſatisfied herewith, *B.* dieth, and his wife ſued to be endowed of the Land, and the Court would give *A.* no reliefe againſt this Suit: *Trinity* 6. *Caroli.*

A Copy-holder may not be ſued for Land without the Lord; *Caries Reports* 57.

An Heire alſo here in ſome caſes ſhall ſue and be ſued, further then the Law bindeth him, as in the caſes enſuing.

An Heire of an Eſtate in taile, having Lands in fee, diſcended from the Anceſtor, in lieu thereof is bound by decree to repay the purchaſe money, or let the Purchaſer have the free Land: *Pearces caſe*, 8 *Jacobi, Tothill* 184.

The Mother and Son bought tailed Land of her Anceſtor, to the Plaintiff ſome of the money due on a Bond which is loſt; the Court thought fit to charge the Mother and the Son, becauſe of the Land in their poſſeſſion.

The Father ſold his intailed Lands, but had little for them; it ſeems the Heire may compell the Purchaſer to give the worth, *Tothill* 181.

The Father articled for Land, the Son no party, but conſented to it, and it was decreed againſt him: *Pauls caſe, Trin.* 4. *Jacobi, Tothill* 69.

A Deed not inrolled was decreed againſt the Heire of the Land, *Tothill* 55.

The Father conceiving his Land to be Free-hold,

gave part of it to a younger Son, and it fell out that there was an old ſleeping Deed of intaile, and yet it was ordered the younger Son ſhould have it: *Pounteneys Caſe, Tothill* 54.

Executors may charge or be charged in equity, further then the Law doth charge, wherein as to Suits or Acts by them, take theſe inſuing.

1. Here they may ſue one the other, *Tothill* 8.

2. One of them may ſue an Executor of an Executor, if he have gotten the Eſtate into his hands: *Briertons caſe, 6 Jacobi, Tothill* 87.

3. Two Executors be, the one doth diſagree, the Act of the other ſhall binde in equity, as it doth in Law.

As to Suits againſt Executors take theſe things.

Firſt, One Executor alone without the reſt may be ſued here, but he ſhall be charged for no more then he hath: *Harbages caſe, 35 Eliz. Tothill* 86.

Secondly, An Executor ſhall be bound by decree againſt the Teſtator, *Hill* 5. *Caroli.*

Thirdly, He muſt pay coſts adjudged here againſt the Teſtator, if he have aſſets.

Fourthly, He ſhall not be charged here for a Treſpaſſe done by the Teſtator, *Hollands caſe, Tothill* 84.

Fifthly, Nor may he be compelled here to give Bond, to perform the will without ſpeciall cauſe be ſhewed; as that he is decayed in Eſtate, or hath broken the truſt already in ſome particulars, or the like, *Brownes caſe, 32. Eliz. Tothill* 86.

Sixtly, He may here be ordered to pay a Debt by word, before a Debt due by ſpecialty, *Tothill* 53.

One Joynt-Tenant or Tenant in Common, may here have reliefe againſt another.

The Father may have relife againſt his own Son, in caſe of breach of truſt for a Leaſe, *Paſch. 1597. Dormers caſe.*

Of

Of Truſts.

A uſe of truſt was and ſtill is either of Land or of Goods, and both theſe are either expreſſed or implied.

A uſe of truſt of Land was a truſt repoſed in another, that he ſhould ſuffer him that did truſt, to take the profits of it, and he that was truſted, was to diſpoſe the Land according to the direction of him that truſted him; as when a Feoffment was made to *J.S.* and his Heires, to the uſe of *W.S.* and his Heires: here *J.S.* had the Eſtate and property of the Land, but *W.S.* had or was to have the profits in honeſty and equity. So if one had agreed with *W.S.* for a peice of Land for 20 l. paid, and had no aſſurance, yet the equity of the Land was in the Contractor.

The uſe of Goods is when one man hath them in truſt for another.

The uſe of Goods or Land expreſſed, is when the uſe or truſt is expreſſed between the parties, upon the making of the Eſtate implied, when it is not declared upon the agreement, but left to the conſtruction of Law; as if I bargain and ſell my Land, levy a Fine, make a Feoffment, or ſuffer a Recovery of my Land without money, and no uſe expreſſed, this in Law is to my own uſe.

But if it be for money, it ſhall be to the uſe of the bargainee, Conuſee, Recoverer, or Feoffee.

If it be without conſideration, that I conveyed my Land by Feoffment to *J.S.* to have and to hold to him and his Heires, to the uſe of his Heires; in this caſe *J.S.* and his Heires, have the uſe in Law.

To every of thoſe uſes there are two inſeparable incidents, Confidence in the Perſon, and privity he

the ſtate, expreſſed by the parties, or implyed by the Law: And when either of thoſe failed, the Uſe was either gone for ever, or ſuſpended for a time at the leaſt; and therefore if the Feoffee to uſe upon good conſideration, had infeoffed another of the land that had notice of the Uſe, the Uſe had been gone for ever; becauſe howſoever there was a privity of Eſtate, yet there was no Confidence in the perſon; but if the feoffment had been without conſideration, to ſuch a one in this caſe the uſe had remained ſtill, becauſe the Law did imply a notice: So alſo it ſeems the law was, when it was made in conſideration of Marriage only.

And if a Diſſeiſor, Abator, or Intrudor had come to the poſſeſſion of the land, whereof the uſe was albeit he had notice of the uſe, yet the uſe was ſuſpended during their poſſeſſion, and they ſhould not have been ſeized to the uſe as the Feoffee was, for they come not to the land in the *Per*, but in the *Poſt*.

If a Lord by Eſcheat, Lord of a Villaine, or one that had entred for *Mortmaine*, or that had recovered in a *Cſtoavit, &c.* had come to ſuch land, and had notice of the uſe, the uſe had been gone for ever, for thoſe come to the Land in the *Poſt*, and above the uſe.

And the Tenant in Dower, and by Curteſie, ſhould not be ſeized to uſes in being, for all theſe wanted privity of Eſtate.

And if there had been tenant for life, the Remainder in fee to the uſe of another, and the tenant for life had made feoffment in fee to one that had notice of the uſes, this ſecond feoffee ſhould not have ſtood ſeized to the firſt uſes.

So if the Husband had made a Feoffment in Fee of the land of his wife upon conſideration, and without any uſe expreſſed, the Wife ſhould not have had a *Subpœna*, becauſe the Feoffee was not in privity of Eſtate of the Wife.

And

And if *Ceſtui que* uſe for life, or in taile, the Remainder in tail with divers Remainders over in uſe had made a feoffment to one that had notice he ſhould not have been ſeized to the firſt uſes.

But now at this day, by the Statute of 27 *Henry the eighth, Chapter the tenth*, the uſe or truſt and the poſſeſſion of Lands are for the moſt part united, and in all ſuch caſes where they are united, and the uſe executed by the Statute, the Chancery doth not intermeddle; but leave them to the Law. And ſuch is this, where one ſeized of Land in fee, doth convey it to the uſe of one and his heirs, or heirs of his Body or for life, or to the uſe of one of his Executors or Adminiſtrators for years.

But there are ſome uſes and truſts ſtill that are not Executed by the Statute, and thoſe remain as they were before, and are in the Conuſance and order of the Chancery, as where lands are conveyed without conſideration in fee-ſimple after this manner, that the Feoffee and his Heirs ſhall take the profits, and deliver them to the Feoffor and his Heirs, or that the Feoffee ſhall account and give the profits to the Feoffor, or that the Feoffee ſhall convey the land to the Feoffor, or to his Heirs, at his age of one and twenty years, or where it is conveyed to *J. S.* and his heirs, in confidence that *J. S.* ſhall alien it to whom the Feoffor, or to whom *W S.* ſhall appoint, or the like: Or wher the lands be conveyed to certain uſes expreſsed and there no other ſecret uſes agreed upon between the parties.

So where land is conveyed to one without conſideration to one and his heirs, without expreſſing any uſe or intent, this is to the uſe of the feoffor, who may diſpoſe of it as he pleaſeth: But if it be to any intent certaine, as to take back an Eſtate with remainders to others, *&c.* Here hee cannot change it.

Theſe and ſuch like uſes and truſts are not within, nor executed by the Statute, but they remaine as they were before the Statute, for all the ſtate is in the party truſted, and the Grantor, or he to whoſe uſe the Grant is, hath nothing but a uſe for which he hath his remedy onely in Chancery, where matters of this nature are determinable, for it is a rule, that as the queſtions of uſes and truſts that are within the Statute are to be decided and ruled by the Judges of the Common Law; ſo all other queſtions of uſes and truſts that are out of the Statute are to be ruled and decided by the Judges of the Chancery, *Cook* 1.138. *Dyer* 369.356 *Crompton Juriſdiction*, 65. 58. 59. And the Judges in Chancery in ruling thoſe caſes, doe proceed much after the rules they went by in the regulating of uſes at the common Law, before the Statute.

Before the making of the Statute theſe amongſt other were the Laws of uſes.

1. The Feoffor was to take the profits of the Land, and he might have diſpoſed of it in his life time, or at his death to whomſoever he pleaſed; and his Freinds in truſt were to ſettle it accordingly, or be inforced to it by *Subpæna* in this Court; and if he did not diſpoſe it, the uſe was to go to his Heires, and if he had dyed without Heires or diſpoſition, it ſeemes the Feoffees ſhould have had the Land.

Secondly, If the firſt Feoffee had conveyed it to a ſecond Feoffee to the ſame uſe, or to a ſecond Feoffee that had notice of the uſes, in theſe caſes the ſecond Feoffee had it to the ſame uſes; but if the Feoffee had ſold it *Bona fide*, or conveyed the Land to one that had no notice of the uſes, in theſe caſes the uſe had been gone, and he, to whoſe uſe it was, remedileſſe for the Land.

3. A bruit of a truſt, or ones ſaying there was a truſt

truſt to another, I being about to buy the Land, becauſe he would not have me to buy it, it ſeemes is not ſufficient, but a Suit about it, and proof of it in Chancery, is ſufficient notice to him that ſhall buy it.

4. If the *Ceſtuy que uſe* had appointed the Land to be ſold by his Feoffees to pay his debts, the Creditors might have compelled the Feoffee to ſell it, if he in his life time, or by Will at his death had appointed them to convey it to *J. S. J. S.* might have compelled them to it, and ſo their Heirs.

5. The Feoffees (if any occaſion had been) were to bring or defend any Action for the Land, and to plead ſuch pleas as the Feoffors ſhould appoint, or be inforced in Chancery to it.

6. If the Feoffor dye, and the Land deſcend to his Heire, the party to whoſe uſe, *&c.* as it ſeemes had no remedy againſt him.

7. If the Feoffee or Donee to uſe, ſell to one that knows of the uſe, the *Subpæna* ſhall go againſt them both, otherwiſe againſt the party truſted onely, who muſt make a recompence for the breach of truſt, if the Land be gone.

Theſe amongſt other were the rules by which uſes at common Law were guided, and much accordingly are uſes not executed by the Statute, and truſts of Lands and goods ordered and guided at this day, as in the caſes following, Of Inheritance and Freeholds, Of Chattels, Of Goods.

Of Inheritance and Freeholds.

IF I without any conſideration enfeoffe one and his Heire, of Land, to the intent he ſhall take the profits thereof, and deliver to me and my heires: Or

to

to the intent he ſhall account to me and my Heires for the profits thereof; or to the intent he ſhall reconvey it to me and my Heires, or to my Heire at one and twenty yeares old, or to the intent that he ſhall alienate it to *L. M.* and his Heires, or to whom I ſhall appoint; or I convey it to certaine uſes expreſſed, but there are other ſecret uſes agreed upon between us; in all ſuch like caſes which are out of the Statute of uſes, this Court of Chancery, if any complaint be, will order the parties truſted to performe the truſt.

If I without any conſideration bargaine and ſell my Land by Indenture, to one and his Heires, to the uſe of another and his Heires (which is a uſe upon a uſe) it ſeems this Court will order this: But if it were in conſideration of Money by him payd, here it ſeems the expreſſe uſe is voyd both in Law and Equity.

And if a Woman in conſideration of foure hundred pound payd her by her Son, bargaine and ſell her Land by Indenture to him and his Heires, to the uſe of her ſelfe for life, and after of the Heires of her Son, in which caſe by Law the Feeſimple is to the Son preſently, and the uſe for life to the Mother voyde; nor is there as it ſeemes any releife for her in this Court in a way of Equity, becauſe of the conſideration payd, but if there were no conſideration, on the contrary, *Tothill* 188.

A voluntary conveyance was made to Friends in truſt, to the uſe of the mans owne children, with a Remainder over; the Feoffor being indebted much Money, the Court enabled him to ſell part of it to pay his debts, *Grants Caſe*, *Tothill* 42.

If one that hath Land in truſt, convey it to one that hath notice of it, and he convey it to one that had no notice of it; in this caſe he that had no notice

tice is ſeized to the firſt uſes, *Pills Caſe, Totbill* 186.

If one convey his Land to Friends in truſt, and after ſell the inheritance, the truſt in Equity goes to the Purchaſor, *Decrees Totbill* 44.

Copyhold was ſurrendred to the uſe of *J. S.* to the intent that he ſhould pay an Annuity to a third perſon, the which he refuſed, the Court ordered him to pay it with all the Arreares, *Totbill* 107.

Of Chattells reall, and terme of yeares.

IF I be ſeized of Land in Fee, and convey it to *D. L.* and his Heires, to the uſe of *W. S.* his Executors and Adminiſtrators for twenty yeares, or for any other number of yeares, in this caſe the uſe will be executed within the Statute: But in caſe where I be poſſeſſed of a terme of yeares in being, and grant it to Friends to any uſes and purpoſes in truſt, this is out of the Statute of uſes, and orderable in Chancery, onely where if the truſt be broken, I muſt have remedy.

One poſſeſſed of a terme in yeares, conveys it to Friends in truſt, to the uſe of *D.* for life, and after of the Heires Males of his body, in this caſe the Court reſolved and ordered that *D.* ſo long as he hath an Heire may diſpoſe it; and that an intaile of, or out of a Chattell, is not good: But a Remainder in tail of a truſt may be ordered in Equity, the Judges agreeing to it, *Tattons Caſe, 7 Jacobi, Totbill* 83.

The generall truſt of an Executor is to pay debts and legacies, and for the ſurpluſage to account to the Ordinary, *Ad pios uſus.*

Henry, Earl of *Darby*, conveyed certain leaſed lands in truſt to *Doughty* his ſervant for payment of his

his Debts, and upon mediation of an end of Controverſies between the Daughter of *Ferdinand*, Eldeſt Son of *Henry Earl*, and *William* his younger Son now Earl: It was ordered and agreed, that *William* the now Earl ſhould pay all his Fathers Debts; whereupon *Doughty* conveyed all thoſe leaſes to *William*, And after the Creditors ſued him in Chancery, but had no releif, and were ordered to purſue their remedy againſt *Earl William*, *Hil.* 1. *Jacobi*, *Caries Reports* 25.

The Plaintifs wife conveyed away her Eſtate to the Defendant her Son before marriage, and after the Defendant conveyed it to his Children: In this caſe the Court conceiving it to be done without any Conſideration, did decree it for the Plaintiff againſt the Defendant and his Children, *Povyes* Caſe *Tothil*, 98.

Of Chattells perſonall or Goods.

IF I deliver Money or Goods, or cauſe a Statute bond or other Eſpecialty to be made to another to my uſe, or to any purpoſes or intents in truſt, and he perſorm not the truſt, I may compell him to it, or to give me recompence for the breach of the truſt here, and therefore if he diſpoſe the Money or goods to his own or any other uſe, then I appointed it, or will not diſpoſe it according to my minde, or releaſe or diſcharge the duty, my remedy is by *Subpæna* in this Court, and if in theſe caſes the Goods or Mony be taken from him, or he have any iniury in them, he muſt ſue for remedy, and I may compell him to it here, 7 *Edw.* 4. 14. 29. *Cromptons Juriſdictions*, 43. 62. 65. *Brook Feoffment* 60.

If a Statute be made to *A.* and *B.* to the uſe of *A.* alone

alone, and the Conuſor get a releaſe of it from *B.* alone, in this caſe *A.* ſhall have remedy here againſt them both, (as ſome ſay againſt *B.* only, and not againſt the Conuſor.) See *Caries Reports*, 14. and 15.

Of Bargaines, Agreements, or Promiſes.

ARticles of Agreement were breifly drawn between two, and their hands to it, for the Sale and aſſurance of lands for mony; the Seller refuſed, and upon complaint here, was ordered to make the aſſurance according to the agreement, the manner of the aſſurance referred to a Maſter of the Chancery, *Chivers caſe Hil. 4. Caroli.*

A Suit was brought here upon a paroll agreement to execute an aſſurance of Land upon a marriage agreement (The caſe thus.)

A. Suitor to *B.* the Brother of *A.* comes to *B.* and tells her, that if ſhee will marry his Brother, he will aſſure her of twenty pounds a year land for her ioynture, and ſhee did marry him, and after he refuſed: It was decreed in this Court, and the Court of Requeſts both, that he ſhall be compelled to it; and where it was ſaid that heretôfore the Chancery did not uſe to decree paroll agreements for aſſurance of Land, it is now otherwiſe; for where there is any execution of it by payment of all, or any conſiderable part of the mony for the land, there the court doth decree it.

In the Exchequer one ſued by Engliſh bill upon a paroll agreement to have land aſſured, and ſhewed that he had provided two thouſand pounds the purcha

chaſe money to his great loſſe, *&c.* And the other refuſed to aſſure the Land: In this caſe the Court would not decree the aſſurance of the land, but decreed he ſhould pay the Plaintiff damages for his loſs, So in the 13 *Caroli, Olivers caſe.*

The agreement was to convey the land as Councell ſhould advice, the paper Booke drawn and agreed on to be ingroſſed, and then the ſeller refuſed to proceed in this caſe, the Court would not decree it to be done, becauſe no atticles nor mony paid, but a bare paroll agreement; And yet ſome ſpecial circumſtance may make this binding, and therefore a verball agreement between Lord and Tenant, becauſe the Tenant was an ancient Tenant, and hath been at charge in building, was decreed. *Kings caſe and Hunts caſe, Tothill 65. 66.*

A. Covenants with *B.* upon the Marriage of his Daughter, to levy a Fine of the land to *D.* And the Daughter being dead, and ſome mony unpaid, *A.* ſold away the Land to others. In this caſe he was ordered for a hundred marks to make the Eſtate good, *Mich.* 8 *Caroli Pages* Caſe, *Tothill* 47. *and* 48.

A Bill was preferred here, ſuppoſing ten ſhillings paid, and two thouſand pounds to be paid for land, to have the Land aſſured, and upon a Demurrer it was over-ruled, becauſe it may be to prepare for an action of the caſe; But it ſeems in this caſe the Court would not decree the aſſurance, *Trin.* 38. *Eliz. Williams caſe, Tothil* 72.

The Cuſtomes of a Mannor were in queſtion between Lord and Tenants, and Tenant and Tenant: And a generall agreement made by Deed indented and inrolled here, and a Bill to eſtabliſh it, and nothing could be found, but the Deed: and yet the court would not alter it, albeit it was obiected that the Lord was at the time of the agreement Tenant in

Tail

Tail, and ſome of the Tenants Infants and feme Coverts: *Caries Reports* 22.

If one enter into a Statute to *J.S.* who doth afterwards by Indenture of agreement promiſe and agree with the Conuſee, that in caſe the Conuſer did faile of payment, Execution ſhould be done upon ſome certain Land only: In this caſe, if after it he ſhall ſue Execution upon any other Lands, the party grieved may have relief here, and compell him to perform his agreement, and have an Iniunction alſo if he deſire it: *Pulvertoſts caſe*, *Caries Reports* 37.

The Plaintiffs Bill was that he leaſed a houſe to the Defendant, and did covenant to repaire it, and then the Defendant did covenant to keep it ſo, and that the Defendant as well to make the Plaintiff break his Covenant, as to free himſelfe from his Covenant, did interrupt and threaten the workmen, ſo that they durſt not go on, and ſo the Houſes are decayed, and the Plaintiff without remedy. The Defendant demurred, pretending the Plaintiff had remedy by Law, but it was overruled and put to anſwer; *Caries Reports* 59.

A Bill was brought to be relieved againſt the Defendant as Brother and Heire, for that the Plaintiff had paid to his deceaſed Brother 34 *l.* for a Leaſe, and he died before it was made, and therefore deſired his Leaſe or the money, and was relieved: *Caries Reports* 77.

One Joynt-Tenant promiſed the other, lying on his death-bed, he would not take advantage of the ſurviorſhip, but ſuffer him to diſpoſe of it by his Will, by which he deviſed part for the payment of his debts, and the Survivor was ordered to make the Eſtate accordingly: *Caries Reports* 81.

The Plaintiff bought of the Defendant the reverſion of a Copy-hold which he could not inioy, as was confeſſed

feſſed by the Defendants anſwer. Ordered by the Court, to ſhew cauſe why he ſhould not repay the money back againe, which he had received on the Bargain; *Caries Reports* 93.

One brought his Bill to be releived, hereupon a promiſe made to him by the Defendant to ſurrender a Leaſe upon the payment of an hundred Marks; and becauſe the matter was meet for the common Law: *Caries Reports* 95. 97.

The Bailiffs of a Town promiſed a leaſe, the Court upon this would not give any relief againſt any of their Succeſſors, but againſt the ſame perſons, as common perſons upon the promiſe: *Caries Reports* 103.

What miſpriſions in conveyances or other, Deeds are relievable here.

WHere there is any miſtake in a Deed, ſo that it is not made in purſuance of the intent and Agreement of the party: This Court gives Releiſe.

If the word Heirs being in fee ſimple, or the like, be omitted; or that part of the land bought and ſold be left out of the Deed, and that it do appear, that the conveiance was made upon good conſideration, the court in this caſe will rectifie: ſee to this purpoſe *Caries Reports* 16. & 17.

Dean and Chapter of *Briſtow* made a Leaſe, miſtaking the name of the corporation, and the Court held, that for leaſes made for ſome time of continuance, and upon good conſideration, there ſhould be releife given here, *Caries Reports*, 32.

The Leſſee in the Leaſe was not named in the premiſes of the Leaſe, but in the *Habendum* only, decreed to be

be good, and being referred to the two chief Justices and the cheif Baron, was by them certified to be good in Law, *Butlers Case.* 22 *Eliz. Caries Rep.* 88. One brought his Bill here, to be releived for that he had conveyed more Land by the Deed then was intended and agreed; in this Case becauſe it appeared that the Defendant was a Purchaſor, upon a valuable conſideration, the Court would not releive the Plaintiff, *Cliffords Case*, 4. *Jacobi*, in Chancery: And yet where more Lands paſſed by a Fine then was intended, and the party releived here by the Judges conſent, *Caries Rep.* 20.

Miſtakes in making of a Bond in either of the parties names, may be holpen here, *Collions Case*, *Tothill* 7.

If a power be reſerved to make Leaſes by a Covenant without a tranſmutation of the poſſeſſion, no helpe can be here, becauſe it is voyd in Law: And if it be upon a change of poſſeſſion, and the power be not preciſely followed, that is doubtfull, and rather more ſtrong againſt helpe, for then the Eſtate works. and the power gone, and upon Wills no help: See *Caries Rep.*

If one be bound to me for money, and the ſame day after the ſealing of the Bond I give him a releaſe for other things, which by miſtake is made too generall, whereby this Bond is alſo releaſed, in this caſe I may be releived here, and ſhall receive the Money notwithſtanding, *Topps Case*, *Tothill* 27.

Haddam the Husband was ordered to procure his Wife to levy a Fine, and to enter into a new Bond of five hundred pounds, becauſe the old Bond was worth nothing, by the miſtake of the writer, 10 *Jac. Tothill* 140.

Where an assurance of Land is made defective, this Court will inforce the perfecting of it.

WHere a Conveyance is made for Lands or Tenements, and it is found defective, and the Estate not well executed to the Purchasor, according to the intent of the parties, for lack of words sufficient in the Deed, or for lack of Livery of Seisin, Attornment, inrollment, or the like: and there was a good consideration given for the Land; in such like cases, the Court in behalf of the Purchasor will compell the party, in whose power it is, to perfect the Estate, *Tothill* 44. 48. 182. 183. 138.

Where a man for money or other valuable consideration, sells Land to one, and the word Heires is left out in the *Habendum*, in this case the party who sells shall be compelled to amend it: And so when lesse is granted then was intended, and so for any other mistakes, *Caries Reports* 16. 17.

A Messuage was demised (*Cum pertinentiis* only) and because sundry Lands had been occupied formerly therewith for the same Rent, and by lease of the same words, the Lord *Chancellor Bromely*, and the Judges ordered it should all passe; though perhaps in Law they will not passe by those words, but it seems in such like Cases it is very considerable in Equity, what the value of the Land is, and what money is given; for if the House with the appurtenances be sufficient for the money, unlesse the intent of the parties were to grant the whole it seems agreeable to Equity that there should be no further Extent made of the words then what the Law makes.

The

The Anceſtor takes money for a Leaſe, and dies before it is made; the Heire muſt make it good or repay the money, *Caries Reports* 7.

Where a man for money or other valuable Conſideration ſells Land by Deed, but Livery of ſeizin is omitted, I may compell him afterwards to do it by this Court: So likewiſe, if upon the ſame conſideration he ſell me Land in two counties, and have given me livery of ſeizin of the Land only in one county, this Court will order him to make Livery in the land in the other county, or pay back part of the money, *Caries Reports* 17.

Where a conveyance is imperfect through the want of the Tenants Attornment; the Tenant in this caſe ſhall be compelled by this court to attorn, and ſo it was decreed in *Hillari Tearm* 3 *Caroli*.

A. was Leſſee for one and twenty years, and leaſed to *B.* for ten years, rendring Rent; *A.* without the privity of *B.* did grant the Reverſion to *C.* and *B.* refuſed to attorn, and *C.* thereupon ſued *B.* in Chancery to compell him to attorn; And in this Caſe it was decreed by the Maſter of the Rolls with the aſſent of the Maſters of the Chancery, that he ſhould attorn and pay the arrearages; But Juſtice *Whitlock* then aſſiſtant was utterly againſt it, and of his opinion were the two cheif Juſtices, cheif Baron, and Juſtice *Dodridge*; But they all agreed the parties themſelves, to the aſſurance may be compelled to make Livery: And it hath been often denied here to compell him to attorn who is at Liberty by Law, eſpecially where the party quarrelleth at the Tenants Eſtate, or entreth into part of the Land, or hath covenanted for recompence in Caſe of not attornment, *Caries Reports* 4.

Where the Conveyance is made without Good Conſideration: This Court of Chancery *will give no releife.*

FOr inſtance; Where there is a Rent granted, and no Deed to warrant it, and nothing given for it, or a Reverſion is granted, and nothing is given for it, this Court will not inforce the Grantor to perfect it.

Where Eſtate was made by Covenant, and not good by Law, it was ordered by this Court to be made good, *Princes caſe*, 40. *Eliz. Tothil* 85.

A Deed which was not inrolled was by this Court decreed againſt the Heir of the Land, but agreed it ſhould not binde any other Eſtate challenged by ſurvivorſhip or otherwiſe, *Paules Caſe*, 14. *Caroli Tothil* 54.

A bill was here exhibited to be releived againſt the Defendant, who would have avoided an Eſtate for lack of Livery of ſeiſin, and it appeared that the Plaintiff had inioyed it quietly five and twenty years, in this caſe it was decreed he ſhould continue the quiet poſſeſſion without Livery and Seiſin, *Ridens* caſe, 17 *Jacobi Tothil* 54.

Upon Promiſes, concerning Goods or Debts

WHere there is a Contract made for Goods or Chattells wherein the Contractor hath any wrong

wrong done him, if he gives (*Quid pro quo*) that ſo it appeares there is a good conſideration in it: In this caſe the Contractor may be here relieved, but on the contrary where there is no conſideration, for there it is *nudum pactum.*

VVhere a man makes a promiſe without a conſideration, to build a man a houſe, make him ſuch or ſuch Goods, he ſhall not be here compelled to it: *Cromptons Juriſdiction* 49.

A ſpontaneous and generall promiſe without any conſideration was made by the Son to pay his Fathers Debts, (no advancement coming to him by his Father) he being ſued here, the Cauſe was diſmiſt: *Alexanders caſe, 7 Caroli.*

VVhere the Obligee agrees with the Obligor, to give him day for payment of the Debt, and he ſueth him or his Surety before the day given here, this Court will relieve him.

What reliefe ſhall be had where there is extremity uſed, upon a Statute Mortgage Bond or other Ingagement.

WHere a man by way of Mortgage conveys Land to another for ſecurity for money lent; in this caſe albeit the time of redemption be paſt, yet upon the paying of the principall money Intereſt and Damages, he may have the Land again by decree of this Court; yet where the Mortgage hath been of long continuance, as of twenty yeares or upwards, this Court will hardly give back the Land, unleſſe in ſome caſes extraordinary: And if the Mortgager make a Feoffinent of it to a Stranger, and ſo

extinguiſh the Condition, unleſſe it appeare to be to the end to pay the Debt, the Feoffee perhaps may not have this advantage; *Caries Reports* 53. *Crowthers Case*, 39 *Eliz. Tothill* 79.

A Copy-holder in fee ſurrendred to the uſe of one and his Heires, upon condition of redemption after this computing his Debts and Writing then down he doth will part of his Land ſhall be ſold to pay his Debts; after his death one of the Creditors doth pay the money at the day of the Morrgage, yet the Surrender was Enrolled, and another Creditor ſued him and the Heire here, and had a decree that the Land ſhould be ſold to pay the Debts, and if any remained, it ſhould go to the Heire: *Caries Reports* 7.

Where there was Leſſee for yeares rendring Rent, and two men ſtriving for the Reverſion, he exhibiting his Bill againſt them, upon payment of his money into Court, according to his Leaſe he had an Injunction to forbid them both any further to trouble him. *Caries Reports* 46. *and* 47.

VVhere the Conuſee of a Statute extend the Lands in the hands of one of the Purchaſers, and ſpare other Purchaſers? In this caſe he may be compelled to extend upon the whole in all their hands: *Caries Reports* 111, 112.

VVhere a man grants a Rent charge out of all his Lands, and after ſels it by parcels to diveis perſons, and the Grantee force one only to pay it, the party ſo paying it may here be relieved, and force the reſt to contribute, and the Grantee to take no more of him then what is anſwerable to his proportion of Land; But in ſuch caſe he muſt be ſure he make all that have bought any of the Land, Defendants, that ſo he may make them chargeable with the Rent, and then they muſt ſhew cauſe why they ſhould not contribute: *Caries Reports* 2. 23. 92. VVhen

VVhen the Conuſee in a Statute, or Plaintiff in a Judgment hath received ſatisfaction; the Plaintiff in Chancery, or Conuſor, his Heires Executors or Adminiſtrators, or a Purchaſer charged or chargeable by it, may force him if he be living, or his Executors or his Adminiſtrators, if he be dead, to acknowledge ſatisfaction upon the Judgment, or to deliver up the Statute, and if Statutes be very ancient and nothing done upon them, this Court will inforce the Owners of them to deliver them up without ſatisfaction. In like caſe this Court will force the delivery up of old Bonds; *Tothill* 178, 179. *Caries Reports* 145, 146.

VVhere the Plaintiff had Judgment and Execution againſt the Defendant for three hundred pounds, he was by this Court here ordered to take it out for a hundred pounds only, *Caries Reports* 51.

VVhere a man upon an Obligation, *&c.* either at, or after the day according to Law, hath paid any money, and hath no acquittance for it, or have otherwiſe at, or after the day ſatisfied it, and hath no acquittance for it, and it appeares the Obligee hath accepted it and is ſatisfied, and yet keeps the Bond and refuſeth to give the party a diſcharge: In theſe caſes, he or his Executors, *&c.* after his death may inforce him, his Executors, *&c.* after his death in this Court to diſcharge it, and to deliver up the Ingagement: *Caries Reports* 74. *Tothill* 26, 27.

VVhere a man doth his utmoſt indeavour to pay money at the day, and to that purpoſe after he hath provided it, he is robbed, or let by ſome other chance, and afterwards makes tender of it in ſome ſhort time; So where part of the money is paid, and yet the whole Ingagement lies, and the party that hath it, doth refuſe to deliver it up, or to receive the reſt of his money, it being tendred ſhortly after the day, or acknow-

ledge what is paid, *&c. Caries Reports* 1.

So where the Bond is to do any thing other then the payment of money, and the thing is done, and the Condition performed, *Caries Reports* 45, 46.

VVhere a man takes a double ſecurity for one and the ſame Debt, as where he takes a Bond or a Bill and Goods in pawne, or any thing of the ſame nature; this Court will inforce him that hath taken this double ſecurity, to deliver upone of them, *Tothill* 26, and 27.

VVhere I appoint a Scrivener to put out and receive my money, and by my direction he doth receive the money due upon a Bond at the day, and the Bond remain in my hands, and I refuſe to deliver it up, this Court will inforce the delivery of it up, *Hunts caſe* 22 *Iacobi, Tothill* 175.

VVhere a man enters into a Bond or any other Ingagement, for money unlawfully gotten, as at Dice or Cards, or upon a cheating Contract, or the like; this Court will ſee him relieved againſt it, and have it took up or Cancelled: *Tothill* 22, 24.

Where a man gives an Ingagement for that that is nothing worth, and which is neither gain to the Obligor nor loſſe to the Obligee; as for Debts, things in Action not recoverable, here this Court will give reliefe.

A. had a Son he intended to preſent to the Church of *Dale*, and he being ſickly preſented C. for the preſent, taking Bond of him of 600 l. to reſigne upon requeſt: C. is inſtituted and inducted. After the Son of *A.* becomes healthy, and C. is required to reſigne, he refuſed, his Bond is ſued, and he comes into this Court for reliefe, it was denied to him, and the Bond agreed to be good in Law and Equity: *Trinity* 6. *Caroli, Wood* and *Berreis caſe* in Chancery, *Tothill* 26, 27.

Where

Where a man makes a Bond not to marry without the conſent of friends, and the Bond becoming forfeit, is ſued; it ſeems this Bond is not good, and this Court will give the Obligor reliefe, *Tothill* 26, 27.

Where money is paid upon the redemption of a Mortgage by Indenture, without taking any acquittance; this Court will inforce the Mortgage to bring in the Indenture to be cancelled here: *Caries Reports* 17.

The Son and the Father were bound to the Defendant in 500 l. to ſtand to the award of the Lord chife Juſtice, who ordered that the Son who was Plaintiff, and had the Reverſion in Fee, and the Father who had the Eſtate for life, ſhould make ſuch aſſurance as the Defendant ſhould reaſonably deviſe. The Defendant in purſuance thereof tendred an aſſurance to the Father to be ſealed; who being old and blind, deſired time to adviſe with his friends, the Plaintiff the Son ſealed, and the Father did afterwards offer to Seale, and then the Defendant ſaid, he did not care for his Seale, but he put the bond in Suit upon the Fathers refuſall formerly, and it was ſtaid by order of this Court: *Caries Reports* 105.

In any of the afore recited caſes, if the party to whom ſuch Ingagement is made, make uſe of it in any other Court, by way of Suit againſt him that entred into it; he may in this Court by Injunction ſtay the Suit and ſhall have the matter ordered here as in equity is fit to be done: *Tothill* 23, 24. *Sucklyns caſe* 11 *Caroli.*

This Court gives releife againſt the iniuries of other Courts of Juſtice by their over nice and ſtrict obſervation of the rules of the Law.

Where there is an exetremity uſed againſt a man upon a Judgment had againſt him in any Court at Law, for money or land; this Court although it will

not

not make void the Iudgment, yet will it order the perſons as it ſhall ſee cauſe in Equity, and this was reſolved upon a ſpeciall debate by the Kings Command in 14. King *James*.

In all caſes tending to overthrow of iudgments had in other Courts, this Court neither may nor will not examine or revoke them, for if ſo, it would render buſineſſe endleſſe, *See Caries Reports*, 74. 75.

The Heir coming into his Fathers houſe, had of his Fathers Goods worth five ſhillings, and the Defendant ſued a bond of five hundred pounds againſt the Heir as Executor of his own wrong, and proving he ſold or gave away the Goods, a verdict paſſed for the whole five hundred pounds, which appearing by the Certificate of the Iuſtices of Aſſize, an iniunction was granted to ſtay all proceedings in this Action, and to forbid any new action, till the Court have determined the matter, *Caries Reports* 49.

A debt upon a ſingle bill ſatisfied, and the bill not delivered, was ſued, and Execution gotten, and the party was by this Court releived, 22 *Eliz. Owens case*, *Caries* Reports, 74.

If one man do unduely get a iudgment in any Court in the name of another; Releife may be had here, *Caries Reports* 76.

A drunken man being ſued by another for words ſpoken in his drink, tending to defamation, ſought for Releif here but could have none, *Qui peccat ebrius, luat ſobrius*, *Caries Reports* 93.

One exhibited his bill for Releif upon an Obligation of three hundred pounds, which he entred into, conditioned for the making a ioynture to his wife upon conſideration of one hundred ſeventy four pounds promiſed to him by the Defendant in Marriage, which

which was never paid to him; he ſued at common Law upon the bond; In this caſe an iniunction was ordered to ſtay proceedings, *Caries Reports* 112.

In what Caſes the Tenant Copy-Holder ſhall be releived, againſt the hard dealing of the Lord of the Mannor.

FIrſt, If the Lord will out his Tenant that payes his rent, and does his ſervices, or if the Tenant ſurrender in Court to the uſe of another, and the Lord refuſe to admit him, to whoſe uſe the ſurrender was made, or wil not keep Court for the Benefit of his Copy-holder, or exact uncertain fees, they being certaine; this Court in theſe Caſes will give Releiſe.

Secondly, If he will not admit the Tenant Copy-holder upon a Diſcent.

Thirdly, If the Tenant Copy-holder be outed of his Copy-hold, and the Lord will not hold a court, whereat he may ſue for his Right.

Fourthly, If a falſe iudgment be had againſt a Tenant Copy-holder, and he petition to the Lord to redreſſe it, and he refuſe.

Fiftly, If the Tenant Copy-holder petition the Lord to grant him a licence to let, and he refuſe it.

Sixthly, A woman Copy-holder for Life, the Reverſion is granted to two for their Lives, *Cum poſt mortem, vel foriſfacturam*, of the woman, it ſhall happen, and ſhee take a Husband that doth ſurrender to the firſt in reverſion, who is admitted and dieth, and after

after the next desireth admittance, and could not have it; but the Lord entreth as an Occupant (as he might, and the Husband and VVife were willing to surrender to him in the Reversion for life, and the Lord refusing to keep a Court, or leave the possession, was ordered to do both in this Court. *Tothill* 3. 44. 45. *Caries Reports* 3. *Kitchin* 82. 89.

A Copy-holder granted by the Lord, at a Court held out of the Mannor, made good against the Lord by decree of this Court. *Markes case, Tothil* 45.

VVhere the Lord imposes an unreasonable Fine upon his Tenant upon a Surrender, *&c.* The reasonableness of the Fine shall be here adiudged of, and this Court will give releife. A yeares value of the land hath been here alowed good. *Caries Rep.* 54.

This court gives releive to the surety against the Principall Debtor or creditor.

VVhere there is Debtor with a surety, and creditor, and the principall debtor, and creditor, by compact, and agreement without the privity of him who is Surety, continues the debt after the first day of payment, when the surety doth suppose it to be paid: In this case this court will compell the creditor to take his Releif from the principall Debtor, and discharge the Surety, his Heires, Executors, *&c. Miles case* 5. *Caroli, Hares case* 10. *Jacobi, Saunders case* 10 *Jacobi, Tothil* 181

VVhere there is a detainer of any Lands, Deeds, or Goods, this court will give releife towards the Discovery and Recovery of them.

As where a man hath a title to lands and intends to bring his Action, but cannot discover who is Tenant to the Land: In this case he may sue the occupier in this court; and he will be inforced to shew what he, or any under whom he holdes, claims to his knowledge, and then he may know whom to sue, and upon what grounds.

Where

VVhere the Defendant held beyond his term, this Court inforced him to ſhew what Terme his Leaſe was for, *Mich. 6. Caroli. Tothill* 183.

The Conuſee of a Statute did by the power of this Court inforce a Leſſee for yeares to declare all the particulars of his Leaſe, that ſo he might diſcover whether it were extendable or not, 11 *Caroli, Tothill*, 183. *Creſwells caſe, Tothill* 9. *Caries Rep.* 16.

VVhere writings are detained from a man, if the Court do ſee cauſe, it will inforce the Defendant to bring the VVritings into Court by a *Duces tecum*, *Caries Rep.* 43. 52. 53. 67.

This Court gives releiſe for the recovery of Land, debt, or duty, where the Law gives none.

VVhere a man hath juſt title to land, but hath loſt his Conveyances, this Court wil give releiſe for the recovery of his Land, *Caries Rep.* 24. *Goſſats caſe.*

VVhere a man hath good title to Rent, but no meanes to gaine it; as if it be a Rent ſeck, and he never had ſeiſin of it, or any other Rent wherein he hath had no attornement of the Tenant, or ſuppoſing the Rent is by ſome accident (without any recompence) for it diſcharged: So if it hath been uſually payd, but I can ſhew no Deed for it: In theſe and the like caſes this Court will give releiſe for the recovery of it, *Tothill*, 171. 172. 173.

VVhere a man hath a debt due to him upon eſpecialty, and hath loſt his VVriting, or cannot come at it: In this caſe if he have witneſſe to prove it, he may be releived here for the recovery of it, *Caries Rep.* 25.

VVhere an *Elegit* was returned and filed, and the time thereof elapſed, and yet the Plaintiff unſatisfied of his debt, this Court will give him releiſe by reviving the *Elegit*, *Tothill* 179.

VVhere a man makes a VVill with ſeverall deviſes

ſes, this Court will direct how they ſhall be taken and performed in Equity.

The meaning of a VVill is to be performed here, *Cobs caſe, Tothill*, 141.

VVhere there was a Deviſe voyd in Law, by reaſon of a miſ-recitall of a Grant, and lack of an Attornment, this court did here Decree it to be good, *Bacons caſe, Tothill* 79.

This court doth give releife againſt a fraudulent practice to avoyd a Leaſe, *Caries Rep.* 18. *and* 22.

So likewiſe to avoyd a Debt; *Caries Rep.* 18.

This Court will give releife in avoyding conveyances fraudulently made, as where there is a Suit depending between two for Land; and the Defendant hanging the Suit, make ſecret conveyances of the Land, this Court will order him to diſcharge the Land thereof, *Tothill*, 108. *Harbyns caſe, Tothill* 9.

Thus much ſhall ſuffice to have ſpoken concerning the generality of the cauſes the Court of Chancery takes conuſance of, in which for your further ſatisfaction I referr to the Reports of M. Tothill *and Sr.* George Carew.

It remaines we ſhould now come to the practick part of it, which directeth for the moſt part, their whole manner of proceedings, wherein for methods ſake we wil begin with their firſt proceſſe, called a Subpæna.

THis *Subpæna* is the leading proceſſe of this Court, as to the proceedure by Bill and Anſwer, and this doth

doth require the Defendants appearance in this Court, by a certaine day and under a certain paine, to make anſwer to the complaint of the Plaintiffe, which is indeed the Bill, which formerly was wont to be put in before the *Subpœna* was ſued forth, but now otherwiſe uſed; this is called a *Subpœna* to anſwer, and diſtinguiſhed by that name, in reſpect there are ſeverall other *Subpœnas*, in order to further proceedings, as a *Subpœna* for coſts, a *Subpœna* to make a better anſwer, a *Subpœna* to reioine, a *Subpœna* to heare Judgment, a *Subpœna* for Witneſſes to teſtifie, *&c.* A *Subpœna Duces tecum*, for VVritings, Evidences, *&c.*

Touching the *Subpœna* to anſwer, you muſt be very carefull there be no miſtake in the body of the writ, for that may prejudice the Plaintiff, and the Defendant may take advantage if he finde any; but if there be a miſtake in the Labell only of the Writ, no advantage is to be taken by it.

This Writ may be made returnable two waies, either upon the common daies of return, as from the day of *Eaſter*, in fifteen daies, *&c.* or upon a day certain, after any of the uſuall returnes, or after any the great Feaſts, from whence the returnes take their names.

This word (*Next*) muſt be added where it is requiſite, as where the great Feaſt be either to come or paſt.

The Writ of *Subpœna* is to be ſerved before the return thereof be paſt, which they uſually do, either by the delivery of the Writ it ſelfe, under ſeale to the perſon of the Defendant, or by ſhewing the Writ under ſeale unto him, delivering him a Note or Label of the day of his appearance; and this is more uſual when there are more perſons then one in the *Subpœna*, whereby the body of the Writ may be reſerved to be left with the laſt.

For

Or else the VVrit may be left at the Defendants dwelling house, with one of his Family, or at his place of residence: See collection of orders, &c.

It is conceived it may be a good service to leave the writ hanging upon the Door of the house, or to put it into the house under the door, or within the VVindow of the house where the party doth dwell or usually reside at. But that is where it is presumed it afterwards comes to his hands, or that he might be in the house at the time, or had notice of it.

VVhere a *Subpœna* is served on the self same day whereon it is returnable, it is a good service, if it be before noone, and the rising of the Court in Chancery: And the Defendant so served shall be bound to an appearance with all speed.

VVhere a *Subpœna* is had against Husband and wife, and the Husband alone is served, and hath notice that it is against him and his wife; this is a good service as to both, and for want of appearance, an Attachment may be had, either against the wife only, or against both. To which purpose see *Caries Reports* 89. 101. 103. 106. 109. 110.

The *Subpœna* being served, the Bill must be put in in due time, or else if the Defendant appear and no bill filed, they will get costs: To prevent which, take notice what time is prefixed for exhibiting the bill after the day of the Return of the *Subpœna*.

If the *Subpœna* be returnable upon a generall return day, as, *Crastino, Octabis, Tres, Mense, &c.* after such or such a Feast, then hath the Plaintiff time to put in his Bill untill the second day before noon next folowing, the fourth day following every of the said returnes, and you must account the return day, and the fourth day after it for two of the said four dayes.

But

But where the *Subpœna* is returnable upon ſuch or ſueh a certain day of the Month, then the Bill muſt be filed the ſecond day after it, before Dinner.

Where the Bill is not filed, and the *Subpœna* returnable on a day certaine, as on any Day of the Month, the Defendants appearance being entered, his Attorney may prefer coſts the next day after: And if the Bill come not in the next day after coſts ſo preferred before noon, or preſently after Dinner, the Defendant is diſcharged with ſuch Coſts as the Maſter of the Court taxes him.

Where the *Subpœna* is made returnable on a return day, in ſuch caſe the next day after the fourth day is coſts day, and if the bill come not in the next day at noon or preſently after dinner, (the Defendant having preferred his coſts the day before) is diſcharged from Attendance with his Coſts.

Where the coſts are not voluntarily payd for want of a Bill, either by the Plaintiff himſelf, or his Clerk, to the Defendant or his Clark, in ſuch caſe the Defendant may have a *Subpœna* wherby to command the Complainant preſently upon ſight thereof to pay the Defendant, or tbe bringer thereof the ſaid Coſts: And this *Subpœna* muſt be ſerved on the Plaintiff perſonally, and upon ſuch ſervice if the Complainant do refuſe to pay the ſaid coſts accordingly, in ſuch caſe the Defendant may (upon *Affidavit* made, that the *Subpœna* for coſts was ſerved) have an Attachment directed to the Sheriff of the County where the Complainant lives, to attach the Complainant for the ſaid Coſts.

And if the Sheriff of the County make return upon that Attachment, that the Complainant cannot be found, then an Attachment with proclamation may be ſued forth againſt him: And that proclama-

tion being likewiſe returned by the Sheriff as aforeſaid, then a Commiſſion of Rebellion may be ſued forth againſt the Complainant.

On the other ſide if the Plaintiff do in due time file his Bill, and the Defendant appeareth not the next day after Coſts day, then the Complainant upon Oath made, that the Defendant was ſerved with a *Subpœna*, may have an Attachment, and further proceſſe, in caſe the Sheriff return, the party is not to be found, *&c.*

The *Affidavit* that muſt be made of the Service of the *Subpœna*, muſt be made according as the manner of the Service was; for if the *Affidavit* made do not proove a good ſervice as before, no Attachment can be had upon it, and therefore he muſt ſwear as followeth.

That he delivered the *Subpœna* to the Defendant, or that he ſhewed the *Subpœna* to the Defendant, under the Seal of the Court, and delivered to him a Note of the day of his appearance, or a Label of the *ſubpœna*.

Or that he left the *ſubpœna* at the Defendants dwelling houſe or lodging where the Defendant moſt abideth.

Or he may make *Affidavit*, that he heard the Defendant confeſſe, that he was ſerved with a *Subpœna*.

If the party that makes *Affidavit*, can ſwear, that he ſaw another (naming him) ſo ſerve the VVrit as as before; this will be ſufficient to maintain the Attachment.

There can be no Attachment regularly be made out againſt the Defendant for not appearing, untill there be a certain and poſitive Oath made of the Time, Place, and Manner of ſerving the *Subpœna*, inſerting the return of the VVrit:

And where any perſon ſerved with a *Subpœna* do injury,

injury, or wrong, either by word or deed to the party, who acted in the Service of it, or doth ſet at naught, or contemn the writ it ſelf, or the Authority of the Court from whence it iſſues, upon Oath made thereof, and motion thereupon, ſuch perſon will be committed to the Fleet, &c. *Caries Reports*, 91. 92. 110.

WWhere there is appearance made by the Defendant within the time limited, and by the Bill filed: In ſuch caſe the Complainants Attorney may give unto the Defendants Attorney on the ſaid day after the Coſts day a Rule, that the defendant do make anſwer to the Complainants Bill by the ſame day ſeven night then next to come, this Rule and day muſt be entered into the Regiſter; and in Caſe the defendant fail to make anſwer, by that prefixed day ſo entred, or if he do not otherwiſe ſatisfie the Court by ſhewing ſufficient Cauſe and occaſion of ſuch his delay, then the Complainants Attorney may have an Attachment againſt the defendant.

Now this Writ of Attachment cannot be duly had, but where the *Subpena* foregoing is duly obtained and ſerved; for if the *Subpena* be counterfeit, or if true and not legally ſerved; this writ of Attachment in theſe is unduly obtained, & the defendant arreſted by it, upon diſcloſing the matter to the Court, will be diſcharged thereof.

An Attachment duely gotten for not appearing, may not be diſcharged, till the defendant have firſt paid twenty ſhillings Coſts, if the Serving of the *Subpena* were upon his perſon, otherwiſe it is ten ſhillings, and every ſucceeding proceſſe double ſo much: And upon payment hereof, he is to be diſcharged of Courſe, See *Caries Reports*, 32: 72: 79: 94: 105: *Talbil*, 15.

The husband appeared, and the wife not, an At-

ment was granted againſt them both, *Abells Caſe 19 Eliz: Caries Reports 65.*

So he alone appeared, and put in a demurrer in both their names, without excuſing her Attachment was granted againſt both, *Spicers caſe, Caries Reports 39.*

The defendant made Oath, he could not anſwer without ſight of Evidences, and had time given him, and then afterwards put in a demurrer, this VVrit went out againſt him, *Paſch. 21. Eliza. Farmers Caſe.*

VVhere the defendant is ſerved with a *Subpœna*, and afterwards for not appearing an Attachment iſſues againſt him; if he do not appeare upon the Attachment, and the Sheriff do thereupon returne (as in the like caſes he doth) *a Non eſt inventus*, then there will iſſue forth againſt him a Proclamation of Rebellion, wherein obſerve, that this proceſſe of Contempt and all Attachments in proceſſe are to be diſcharged upon the defendants payment or tender to and refuſall of it, by the Plaintiffs Clark of the ordinary caſes of Court, and filing of his Plea, anſwer or demurrer, as the Caſe is without any motion in Court: And if the Plaintiff do proſecute the Contempt, afterwards the defendant will be diſcharged with coſts.

VVhere an Attachment is had, if the Sheriff do not make his Return, a day will be given, and if he do not by that time, the Court will ſet an Amerciament upon him: See *Caries Reports*, 44: 77: 78: *Collection of Orders, Tothil* 15:

Where any party is attached & afterwards proclaied, and he comes not in, but ſtands further out in contempt, in ſuch caſe a commiſſion of rebelion may be iſſued forth againſt him for the apprehending of him, and bringing him to the Fleet, (the proper Priſon of this Court) This

This Commiſſion of Rebellion is ſometimes directed to the Sheriff, and ſometimes to private perſons; as in the caſe of *Cage* and *Elrington*, *Trinity* 30 *Jacobi*, *Tothill* 37.

This courſe is likewiſe taken againſt thoſe that make not Obedience to Orders or Decrees, to pay coſts or the like.

Where thoſe private perſons who are made Commiſſioners, having taken the Perſon in contempt, ſuffer him to eſcape, they themſelves will be committed till they bring him in; as in the caſe of *Sachevorell* againſt *Sachevorell*, *Hillary Term.* 18 *Jacobi*, *Tothill* 38.

If any perſon reſcue one taken upon a commiſſion of Rebellion, the Reſcuer is to be committed.

Where the Commiſſioners upon a commiſſion of Rebellion let the party in contempt go where he liſted, whereby he made an eſcape; they were ordered to be committed to the Fleet till they pay the Debt: See *Nelſons* Caſe againſt *Yelverton*, in *Trinity* 18 *Jacobi*, *Tothill* 39.

Where the party appeares not, but ſtands further out in contempt, a Serjeant at Armes may be ſent out to take him, and if he cannot take him, or that he reſiſt, or having taken him he make an eſcape, and ſo perſiſt high in his contempt; in ſuch caſes a Sequeſtration may be had of his Land: And if the Suit be for Land, a Sequeſtration and Injunction for the profits of the Land to be delivered to the Plaintiff by the Sheriff, or by other Commiſſioners for that purpoſe: as in the caſe of *Boles* againſt *Wadley* and his Wife; *Caries Reports* 38, 58, 105, 106.

we proceed now to Bill and Answer.

THE Plaintiffs Bill is in effect the same that the Declaration after appearance had is either in the Upper-Bench or common Pleas, and laies down the cause of his complaint in Chancery, being such usually as is exempt from remedy at common Law, for that they insert commonly these words in the Bill, that the Plaintiff hath not remedy at Law.

This Bill by the practise of the present times may be put in after the *Subpena* is both taken out and served, provided it comes in within the time before limited, to prevent costs.

Upon one and the same *Subpena* served, two Bills may be put in, provided the matter contained in them appeare not to be one and the same cause, for if it do so, one of them may be dismissed with costs, and where two Bills are so put in containing severall matter, the Defendant must answer them both.

This Bill in Chancery, and all subsequent Pleadings and proceedings upon it, must be succinct and short, and not stuft with repetitions of Deeds, Writings, or Records (*in hæc verba*) but the effects and substance of so much of them only as is pertinent and materiall to be set down, and that in briefe tearmes, without long and needlesse Traverses of such things not traversable, tautologies, or impertinences.

It must not likewise contain any matter criminall or scandalous against the Defendant, or any other; and if it do, and concern the Defendant, he may refuse to answer it; and the Plaintiff and his Counsell whose hand is to the Bill may be punished for it, and the party grieved may recover costs against such Counsell.

This Bill must be put in under Counsels hand, who is

is carefully to peruſe it, if it leaſt it be not drawn by himſelfe, and ſo that it be ſuch as is before directed, and likewiſe the Counſell muſt take care that it be ſuch for the matter of it as the Court will allow, and take Cognizance of, and then he is to ſigne it.

Where any Bill containes matter not proper for this Court to give reliefe in, the Bill wil be diſmiſſed, and ſo likewiſe will it be if there want Counſels hand to the Bill, or if the Counſels hand be counterfeit or diſallowed: See *Caries Reports* 89.

To this Bill in Chancery filed, the Defendant is to make anſwer, wherein many times he makes much delay, but in all caſes of delay he muſt upon Oath ſatisfie the Court of the cauſe of ſuch his delay, which may be in ſeverall reſpects; as

Firſt, where the matter contained in the Bill is ſuch, as to which he cannot give anſwer, without conference had with ſome other perſons named in the Bill, or to whom the Bill refers.

Secondly, where the Bill charges the Defendant with the having of Goods or Chattels of the Complainants, to make diſcovery what they are; in ſuch caſe, the Goods being in the Country and he here, he may make Oath, he cannot make perfect anſwer to the Plaintiffs Bill without ſight and peruſall of the Goods: So likewiſe where he cannot make direct anſwer, without ſight of ſome Evidences or Writings which he hath in the Country, he may make Oath thereof; but in ſuch caſes, that place in the Country where thoſe parties live, Goods, or Writings or Evidences lie, muſt be above twenty miles from *London*; for elſe he muſt anſwer within eight daies after his appearance, unleſſe further time be given him by order.

Upon Oath made as aforeſaid, then his anſwer

will be ſpared till the firſt day of the next Term following.

There may likewiſe Oath be made by another perſon, either his Solliciter, Servant, or ſome Neighbour to the Defendant, that he is ſick, or diſabled for travell, without danger of life.

Upon ſuch Oathes made as aforeſaid, if the Plaintiff refuſe to allow of a *Dedimus poteſtatem* on the behalfe of the Defendant, for the taking his anſwer in the Country; this Court of Chancery upon motion or petition will order it, and the order that is ſo obtained muſt be carefully entred in the Regiſters Office, and the *Affidavit* upon which the Order is grounded muſt be filed in the *Affidavit* Office.

Where the Defendant doth not appeare, or that after he hath made his appearance, he doth not anſwer within the time limited him, nor by way of excuſe ſheweth any the reaſons aforeſaid; in ſuch caſe an Attachment as is aforeſaid is awarded againſt him, which Attachment muſt be entred into the Houſe-Book of the ſix Clarks Office, and likewiſe in the Regiſter's Book, expreſſing the cauſe of the iſſuing of the ſaid Attachment.

Where there is no day by rule given to the Defendant to anſwer, in ſuch caſe the Defendant is at liberty to anſwer at any time during the Term.

And where the Defendant makes default within that time to make anſwer, then an Attatachment may be ſued forth againſt him of courſe, and the ſame with the cauſe thereof (as before) muſt be entred with the Regiſter (*viz.*) That the Defendant appeared, and went away without any anſwer.

Where the *Subpœna* is made returnable ſo neer the end of the Term, that there cannot be a day given to the Defendant to anſwer; in ſuch caſe the

Defendant muſt at his perill anſwer by the ſame day ſevennight next following the day of his appearance, although it be out of Term, for the Court of Chancery is alwaies ſaid to be open.

VVhere the *Subpœna* is returnable on the laſt return day of the Term it ſelfe, then the Defendant is at liberty to appeare the firſt return of the Term following.

But where the *Subpœna* is returnable upon a day certain, althouh the day be the laſt day of the Term, yet the Defendant is bound to appeare and anſwer by that day ſevennight next following the ſaid appearance.

In all caſes where the Defendant either makes Oath that he cannot anſwer without Writings, Evidences, *&c.* or conference with ſome other perſon, or that he have a *Dedimus poteſtatem*, and Comiſſion to take his anſwer in the Country; the Defendant muſt at his perill procure his anſwer to be put in before the day, after the firſt coſts day of the next Term following, unleſſe it be in Trinity Term; then in ſuch caſe it muſt be put in the ſecond day after the ſecond return, or otherwiſe the Complainants Attorney may upon ſuch his default make an Attachment againſt the Defendant for not anſwering by the day prefixed.

VVhere the Defendant lives in the Country, and hath a *Dedimus poteſtatem* granted him for the taking of his anſwer to the Plaintiffs Bill, it hath been formerly the courſe, that in caſe the Counſell finde cauſe of Plea, or Demurrer, that then the Defendant ſhould move, or petition to have a ſpeciall *Dedimus poteſtatem* by order to anſwer, plead, or Demur, for that the Commiſſioners upon an ordinary *Dedimus* had not power to take any thing but an anſwer.

But

But by the late collection of Orders it is ordered, that where the Defendant is ſerved with a *Subpœna ad reſpondendum*, and obtaineth a Commiſſion to anſwer in the Country, he ſhall without more words have the ſame liberty thereby to anſwer, plead, and demur, as he had by the originall Proceſſe, if he could have appeared in perſon: See Collect. of Orders 29.

VVhere the Defendant doth demur, or put in any juſt Plea which he hath, to the diſability of the perſon of the Plaintiff, or to the Juriſdiction of the Court, under the hand of learned Counſell, it will be received and filed, although the Defendant do not deliver the ſame in perſon, or by commiſſion.

And if the Defendant do not put in his demurror or Plea into the Paper of Pleas and demurrors, in the Regiſters Office appointed for that purpoſe, within eight daies after the ſame is put into the Court, that ſo the ſaid Demurrer may be argued before the Lords Commiſſioners as it ſhall fall in courſe; and where this is omitted to be done, the Plea and demurror is over-ruled of courſe, and the Plaintiff may take forth a *Subpœna* againſt the Defendant, to inforce him to make a better anſwer, and in order for coſts, according to the late Rules and collection of Orders.

VVhere a man exhibits his Bill in Chancery and dies, the Suit depending, whoever have the Intereſt in the thing complained for, whether Heire, Executor, or Adminiſtrator, they may put in a Bill of revivor againſt the Defendant, or in caſe the Defendant die, the Plaintiff may exhibite his Bill of revivor, againſt the Heires, Executors, or Adminiſtrators of the Defendant.

Where there is a Bill of complaint exhibited againſt a man and his wife, and the matter contained

in

in the Bill wholly concernes the wife, and they both make anſwer unto this Bill, and after they have made anſwer the Husband dyes; in this caſe a Bill or Revivor muſt be brought by the Complaynant againſt the woman, if he intend to proceed in that Suit; and the reaſon is, for that the woman ſhall not be conſtrained to abide by that anſwer, which ſhee, together with her Husband, or ſolely as wife unto the man, hath formerly made to the Complaynant, for that ſhee was at that time under coverture.

And in caſe ſhee ſurvives her Husband, and containes poſſeſſed or ſeiſed of the thing in controverſie, in *Statu quo*, ſhe may as ſhe ſhall think fit make a new anſwer, and ſhall not be bound up or concluded by that anſwer which ſhe made during coverture, or ſolely as Wife unto the man; and yet if ſhe thinks fit, ſhe may ſtand to that former anſwer of hers, and proceed accordingly in that Suit.

Where the Plaintiff exhibits his Bill in Chancery againſt a femme ſole, and ſhee appearing, makes anſwer unto the Bill, and afterwards marrying, ſhee comes under Coverture, the ſuit depending: In this caſe the Plaintiff may proceed againſt her and her Husband, and ſhall not need any Bill of Revivor; and her Husband ſhall be bound by that anſwer, which ſhe made whilſt a femme ſole, for that ſhe ſhall not advantage her ſelf by her own act.

Where on the other ſide a femme ſole, Plaintiff, exhibits her Bill, and the Defendant makes anſwer unto it, and afterwards ſhee intermarryeth, here there can be no further proceeds by the Husband and wife without a Bill of Revivor, becauſe ſhee hath abated her ſuit by her own act of marriage, of which the Defendant may take his beſt Advantage.

VVhere

VVhere the man and the wife exhibit a Bill of Complaint, and to this the Defendant anſwereth, and the man dyeth, The woman ſhall be at her choice whether ſhe will exhibit a new bill, or proceed upon the Bill by her Husband and her ſelf formerly exhibited.

VVhere there are two ſeized of ioynt Eſtates, or where they are Executors of one will, or Obligees or Obligers, and they prefer a Bill in Chancery to which the Defendant makes anſwer, and after one of them die, here the ſurvivor may proceed in his ſuit againſt the Defendant, and ſhall need no Bill of Revivor.

Note, that the Bill of Revivor muſt purſue the firſt Bill exhibited, for where there is any variance between them, the Defendant may be diſcharged, and the Bill will be diſſolved.

VVhere there are Adminiſtrators, *Durante minore ætate* of an Infant Executor, in the Nature of a Guardian, and they ſue on the Infants behalfe, and the Suit depending the Infant comes to age, here it ſeems there needs no bill of Revivor.

VVhere the complainant hath exhibited this Bill of Revivor, and hath procured thereupon a *Subpœna* to be ſerved; he will be upon this in the ſame caſe, as the predeceſſor was, when the Bill firſt accrued, unleſſe ſome good cauſe to the contrary, as that he is not Heir, Executor, nor hath the like intereſt, *&c.*) can by the Defendants anſwer be ſhewed.

VVhere a man doth wilfully refuſe to anſwer, and ſtand out all the Proceſſe of contempt, the Court will take the matter of the Bil *Pro confeſſo*, and decree it, *Tothil 69.*

If the anſwer be good to common intent, the Plaintiff muſt reply and prove the matter if he can, and

nor

not inſiſt upon inſufficientcy of the anſwer.

No exception can be taken to an anſwer after a Replication put in, for it is then admitted to be good; but before Replication it may be excepted againſt.

But where it is excepted againſt, the cauſes muſt be ſhewen in Writing, and delivered into the Plaintiffs Attorney or Counſell, the ſame Term the anſwer comes in, or within eight daies after, and if he amend it in eight daies, he is to pay no coſts.

VVhere an anſwer is excepted againſt to be inſufficient, it is uſually referred to a Maſter, to conſider of the Exceptions, and he to certifie the Court whether it be inſufficient.

If the Maſter certifie it to be inſufficient, then the Plaintiff may take out Procese for coſts, and the Defendants anſwer is not to be received till he hath paid the coſts.

The firſt anſwer being returned inſufficient, the Defendant muſt pay forty ſhillings ſingle coſts.

If it be an anſwer that came in by Commiſſion, and be inſufficient, he muſt pay fifty ſhillings.

The ſecond anſwer inſufficient paies three pounds.

The third five pounds coſts, and you may have a *Subpœna* both for your coſts, and to make a better anſwer.

But in theſe caſes of Exceptions, the inſufficiencies appearing in the ſame Exceptions, are the point to be inſiſted on, and no new Exceptions may be moved.

VVhere the Maſter upon reference to him findes the anſwer to be ſufficient, and accordingly certifies, there the Plaintiff muſt pay forty ſhillings coſts.

If the Exceptions to an Anſwer be put in after the Term, there ſhall be time given to anſwer them untill the fourth day of the next Term, unleſſe the Court haſten it.

If

If the anſwer come in by commiſſion and be not good, no new Commiſſion will be admitted but upon Oath of the Inability of the perſon, and his payment of fifty ſhillings coſts as before.

VVhere a Cauſe goes to hearing upon Bill and Anſwer, the ſame muſt be admitted to be true in all points, and no other Evidence is to be admitted, but what is matter of Record, to which the Anſwer doth refer, and which is provable by the Record it ſelfe: *Caries Reports* 78. 30.

Concerning Demurrers and Pleas take theſe Rules following.

FIrſt, A demurrer is alwayes where there is matmatter defective contained in the Bill, or where there is forrain matter.

The Plea of forraign matter may be of two ſorts; Either where it is to the Juriſdiction of the Court, or to the diſability of the perſon; as where the Plaintif is outlawed, or excommunicate, or where there is in this or any other Court a Bill or ſuit depending for this very cauſe.

Or it may be that the cauſe hath been formerly diſmiſſed this court or the like.

Or if the matter of it appear upon Record, it may be put in without Oath, otherwiſe not.

In caſe it be a demurror, it muſt expreſſe the cauſe of the demurror, yet other cauſes may be inſiſted on at the time of the determination thereof by the court.

If the demurrer be over-ruled, the defendant ſhall pay five Markes coſts, and where it is allowed, the defendant ſhall have no coſts.

If

If one plead a Plea that is Inſufficient, and ſo overruled to be, as where it is an Outlawry pleaded, and it is not a good plea, he muſt pay five Markes coſts.

An Outlawry is not to be pleaded, unleſſe you plead the Record, *Sub pede ſigilli.*

A plea of Outlawry, if it be in a ſuit for the ſame thing for which a man ſueth to be releived in Chancery, is not to be allowed; but otherwiſe it is allowed, and wil be inforce to hinder all the Plaintiffs proceedings, till it be reverſed.

But when it is reverſed, the Plaintif upon Payment of twenty ſhillings coſts, may upon a new *Subpena* ſerved, put the Defendant to anſwer the ſame Bill.

VVhere the Plaintif conceives the plea for matter or manner naught, he may put it to the Judgement of the court.

VVhere a man pleads a former ſuit, he need not ſet it down with the Regiſter, but it ſhall be referred to a Maſter to certifie (which muſt be done within a Month upon the Plaintifs procurement) And if the Maſter do certifie againſt the Plaintif, he muſt pay five ſhillings coſts: if there be no Report within a Month of filing the plea, the Bill will be diſmiſſed of courſe, with ſeven Nobles coſts.

If the Demurror to any Bill be put in upon any ſlip or miſtake in the Bill; the Plaintif of courſe laying down to the Attorney twenty ſhillings coſts, may amend his Bill within eight dayes after the Demurror put in, but not after that time.

If the Demurror be admitted by the Plaintif to be good within eight dayes after the filing of it, and he doth pay the Defendant his Attorney, or Clarke in court, forty ſhillings coſts; then the defendant ſhal not need to attend his demurror; but the Bill ſhall ſtand

ſtand diſmiſt of courſe without Motion, unleſſe both ſides agree to the amendment of the ſame, but ſuch diſmiſſion is to be no bar to a new Bill to be exhibited by the Plaintif.

VVhere the Plaintif findes ſufficient cauſe for an Order in the anſwer, he may go to hearing thereupon without further proofe, (of which he ſhould be well adviſed) in which caſe he muſt procure his Attorney to preſent the ſame in courſe, to be ſet downe to be heard upon Bill and Anſwer: But in caſe the court ſhall not finde grounds to make a Decree or finall order, the bill ſhall be diſmiſſed with coſts, or the Plaintif admitted to reply, if he deſire it, firſt paying down five pound coſts, within four dayes after ſuch hearing, then the diſmiſſion to ſtand, and the concluſion of the order upon hearing is to be penned by the Regiſter accordingly, and then ſuch diſmiſſion ſhall be a good plea in Bar of any new Bill for the ſame matter.

Where a Plaintiff proceeds ſo far as to proofe, and upon the hearing it cleerly appears the Plaintiff might have had full releife upon Bill and anſwer; albeit he be releived in the cauſe, yet he ſhall pay coſts. See more fully of theſe things in the collection of Orders, 16. 18. *Caries Reports*, 39. 87.

Replication, Rejoynder, and Sur-re-joynder come next to be handled.

THe Replication is the ſpeech of the Plaintiff, in way of Reply to the Defendants anſwer.

The Rejoynder is the Defendants anſwer, to the Plaintiffs Replication.

The Sur-re-ioynder is a ſecond defence to the Plaintiffs action, oppoſite to the Defendants Reioynder.

First

First, The Replication muſt be ſhort, relating to the Subſtance of the Bill, and it muſt avoyd ſuperflous and criminous matter.

Secondly, The Replication muſt affirme and purſue the Bill, and confeſſe, and avoyd, traverſe, or deny the anſwer.

Thirdly, The Reioynder that muſt purſue and confirm the anſwer, and muſt ſufficiently confeſſe or avoyd, or traverſe every materiall part of the Replication.

Fourthly, No new matter muſt be put into the Replication, and ſo much matter only is neceſſary to be there, as will avoid the matter of the Anſwer.

Fifthly, If upon the anſwer there be ſo much confeſſed, that the Plaintiff need not to draw into pleading, and proove all the points, he muſt ſee to it, and reply and go to proofe only in thoſe particulars in queſtion, and neceſſary to be proved.

Sixthly, When the Defendant doth demurr or diſclaime to any Bill exhibited againſt him, the Plaintiff cannot reply: And if the Defendant in thoſe caſes be ſerved with a *Subpena ad reiungendum*, having before made no other anſwer, but a demurrer or diſclaimor, he ſhall have coſts for unjuſt Vexation.

Where the caſe is ſuch, that the parties cannot come to iſſue by reaſon of ſome new matter diſcloſed in the Defendants Rejoynder, that requires to be anſwered unto, the Plantif may ſur-re-ioyn to the Reioynder, and the Defendant likewiſe to the Sur-reioynder, if there be cauſe.

As for the time for the replication to be put in after the anſwer, you are to obſerve that the Plaintif

hath time for all this Tearm and all the next Term, and untill the beginning of the ſecond Tearm following to put in his Replication.

The next Tearm after the anſwer is put in, the Defendant may give the Plaintiff Rule to Reply, and if ſuch Rule be given, and the Plaintif reply not, coſts will be given againſt him.

And where he gives no rule, and the Plaintif doth not reply the ſecond Tearme after the Tearm the anſwer is put in, the bill will be diſmiſſed with the Coſts of Courſe.

But in caſe the Plaintif doth reply, and that the Replication be in Court, the Defendant can have no coſts.

In caſe where the Complainant hath replyed, the Defendant may if he wil reioyn *Gratis* to the Replication, and force the Complainant to ioyn in Commiſſion.

VVhere the Plaintiff intends to go to Commiſſion, he muſt ſerve the Defendant with a *Subpena ad reiungendum*, before he can have Commiſſion to examine VVitneſſes, and upon the Return of the *Subpena ad reiungendum*, and Oath made of the Serving of it; the Plaintiff may by entring Ruſes force the Defendant to reioyn and ioyn in commiſſion, or go on to the Examining of VVitneſſes without him; for having given him ſeven dayes to reioyn, if within that time he refuſe to do it, he cannot do it after.

In ſuch caſe where the Defendant is ſerved with a *Subpena ad reiungendum*, and does not upon the Plaintiffs clarks Demand to the Defendants clark, deliver commiſſioners names by the End of the Tearm

Tearm, wherein this *Subpena* is returnable, there the Plaintiff may without motion or petition, give names and take a Commiſſion *Ex parte*, See *Caries Reports*, III. *and Collection of Orders in Chancery.*

The Manner of joyning in Commiſſion, and the Executing of it.

IN the joyning of this commiſſion to examine witneſſes, the Complainant muſt firſt name one Commiſſioner, unto whom the Defendant may give generall Exceptions.

The Defendant is to name the ſecond.

The Complainant the third. And

The Defendant the fourth.

The Plaintiff is likewiſe to have, firſt the taking out, and carriage of the Commiſſion, as oft as any is ſued out, and he or his Commiſſioners muſt give either in perſon, or by a Note left in VVriting, at the place of the uſuall abode of the other party, fourteen dayes notice to him of the time, and place of executing the commiſſion, and if there be default then made by the Plaintiff or his Commiſſioners, in the Execution thereof; he muſt pay the Defendant ſuch Coſts, as he upon his Oath ſhall make appear, he was put to in the attending of the Commiſſion; and the Plaintiff muſt renew the Commiſſion at his own charge, and the Defendant ſhall have the carriage of it. And ſo on the other ſide ſhall the plaintif have, if the Defendant have the carriage of the Commiſſion, and it be loſt by default of his ſide.

But where it becomes voyd by any Errour of the Clark in making of it; the Coſts ſhall be born by him, and that ſide for whom it was taken out.

Where the Defendant hath the carriage of the Commiſſion, he muſt give notice to the Plaintif, as is before directed, and if ſuch notice be not given, either all the Examinations will be quaſhed, or otherwiſe the Court will grant to the other ſide a Commiſſion, *Ex parte.*

Where there hath been publication, there no comniſſion can be granted or renewed for examining witneſſes without ſpeciall Order.

VVhere a Commiſſion hath been to examine witneſſes, without reference and certificate upon it; it cannot be diſcharged upon a bare petition.

VVhere a Commiſſion is taken out by conſent, and the one ſide at the ſpeeding of the Commiſſion do put in no Interrogatories, nor examine any VVitneſſes (unleſſe upon a motion, and by order of the Court) he ſhall be never after admitted to have a new Commiſſion.

VVhere the Defendant had VVitneſſes to examin, and they being ſerved did not appear, but make default, here a new Commiſſion will be granted to the Defendant, *Caries Reports* 91. 43. *Tothil* 111. *Collection of Chancery orders.*

Touching the choice of Commiſſioners, or Examiners, and the Exceptions againſt them.

FIrſt, they muſt be men indifferent.

The exceptions uſually taken againſt them are, that he who is named Commiſſioner is of Kindred,

dred, or allied to the party for whom he is named, and ſo may very well be deemed to ſide with that party.

Or that he is Maſter to the party for whom he is named, or that he is Land-Lord to the party, or that he is of his Counſell, or Attorney for him, or one to whom he is indebted, or one that hath a Suit with the adverſe party.

The Commiſſion being to be ſit upon at the time and place appointed, the Commiſſioners muſt call the Witneſſes before them, where if they appeare not, an Attachment iſſues againſt them, unleſſe it be in ſuch caſe where the Witneſſes are impotent, and then a Commiſſion ſhall be awarded, to examine them where they be, but uſually they will have coſts before they anſwer.

When the Witneſſes appeare to be examined, the Commiſſioners and Examiners muſt examine them themſelves, and not leave ſo weighty a buſineſſe to the truſt of their Clarks, or others to do it.

They are to hold the Witneſſes to the point inſiſted on.

They ſhould examine them but to one Interrogatory at a time, and ſo that anſwered firſt and at one time.

They are to take what comes from them in anſwer to what they are examined, and not upon their ſight of all the Interrogatories to let them ſet it down themſelves.

After they have been examined, upon better thoughts they may ſuffer them to amend their Examinations. They ought not either to aske them idle queſtions beſides the matter of the Interrogatories, nor ſet down impertinent anſwers.

They are to ſet down truly their ſayings in Parchment, and that done, they are to ſet their hands to

every Schedule Examination, and ſend them up into the Court as they are taken, with a Certificate.

VVhere the Commiſſioners meet with any obſtruction in the work, they muſt certifie that alſo.

After the Commiſſion is duly executed, and that it be returned up, one of them muſt deliver it in Court, or they muſt ſend it by one that muſt make Oath, that he received it from one of their hands, and that it is not altered to his knowledge.

If any one of the Commiſſioners commit any miſdemeanour about examination, the party grieved, upon Oath of it, may have an Attachment againſt him, and cannot have a Commiſſion to examine it upon the Certificate of the other Commiſſioners.

VVhere there is a diſagreement of the Commiſſioners, or where there is any other ſpeciall cauſe that obſtructs the Commiſſion, they may have an Examination ſent down on purpoſe to do it: See *Caries Reports* 30, 31, 40. 47. 80. 81. *Tothill* 189.

The Interrogatories to examine VVitneſſes muſt be ſucciſe and apt.

VVhen VVitneſſes are examined in Court upon a Schedule of Interrogatories, you cannot examine the ſame VVitneſſes upon putting in new Interrogatories.

VVitneſſes may be examined as well by Examiners in Court (in caſe they live in or neer the Town) as by Commiſſioners in the Country.

Either party, as well Plaintiff as Defendant, after anſwer put in, untill publication be paſt, may examine what VVitneſſes they pleaſe in Court, before one of the Examiners; but before anſwer, and after publication, no Examination will be allowed, but by ſpeciall order, ſome ſpeciall cauſe being ſhewed.

Notice

Notice muſt be given both of the names and dwelling places of the perſons examined in all caſes of Examination.

After an order for publication, and that delivered to the Examiner, no VVitneſſe may be examined in Court, though he were ſworn before: *Caries Reports* 27. 58. 93. *Tothill* 189. 190. 192.

Touching Depoſition of Witneſſes.

NO abſtract, or Copy of the Depoſition of the VVitneſſes is to be delivered, till publication be paſt.

No Depoſition of VVitneſſes may be ſuppreſſed upon a bare Petition only, without reference and Certificate upon it.

VVhere there are ſeverall Cauſes which are meerly croſſe Cauſes between the ſame parties, and touching the ſame matter; there the Depoſition of VVitneſſes in the ſeverall cauſes may be uſed at the hearing of both cauſes (being heard together) without any motion.

Where Depoſitions are regularly taken; they may not be ſuppreſſed by motion, but the Depoſitions of witneſſes appearing to this Court to be gotten by practice, may by Order of the Court be ſuppreſſed: Depoſition of witneſſes taken in this Court may by Order of the Court be made uſe of in any other Court, *Caries Reports*, 35. 56, *Collection of Chancery Orders.*

He that will examine witneſſes (*In perpetuam rei memoriam*) to preſerve a teſtimony, he muſt firſt exhibite his Bill, and ſhew his title to the thing, and that the VVitneſſes to prove it are old, and not like to live long, whereby he is in danger to looſe it, and

then pray a Commiſſion to ſome Gentlemen of credite in the Country, to examine them, and a *Subpena* to the parties intereſted, to ſhew cauſe if they can to the contrary.

If the party Intereſted, being duly ſerved within fourteen daies, ſhew cauſe, the Plaintiff muſt deſiſt, if he cannot, he may go on alone, if the other will not joyne with him, as he may if he will; and then fourteen daies warning is to be given for Execution.

The Court in this caſe will appoint Commiſſioners, and give Articles to examine upon, or they may be examined in Court by an Examiner.

None but aged and impotent perſons may be examined upon this Commiſſion.

VVhere the Defendant takes exceptions to the Proceedings in ſpeeding the Commiſſion, as whether he did appeare or not, and whether Oath were made before them of notice given to him of the time and place of Execution thereof; in ſuch caſe the Commiſſioners muſt certifie up with the Commiſſion, the exceptions the Defendant ſo took.

This Teſtimony taken upon this Commisſion, is not to be publiſhed while the VVitneſſes live; but in ſome caſes, as either by conſent of the parties, or upon Oath made, that either the Plaintiff hath ſome triall at Law, wherein he ſhall need it, and that the VVitneſſes are not able to come to the place, or otherwiſe by order of the Court, and then the Commiſsion is to be opened by a Maſter, and to be conſidered of, and afterwards it may, if the party will be exemplified, and may by order of this Court be given in Evidence in any other Court.

Theſe Depoſitions thus taken, ſhall not be made uſe of to be given in Evidence againſt any other, but the Defendant who was warned to defend it, his

Heires

Heires or Aſſignes, or ſome other claiming by or under him, by ſome Intereſt which accrued unto him, after the Bill preferred, *Tothill* 189. 190. 191. 192.

VVhere both Plaintiff and Defendant have examined what VVitneſſes they pleaſe, and are ready to go to hearing, then either of them muſt firſt give the other a Rule for publication; if it be the Plaintiff that gives the Rule, then thus (Day is given to the Defendant of publication upon the Commsſion joyned) and if the Defendant give the Rule, then on the contrary thus (Day is given to the Plaintif for publication upon the Commisſion joyned)

The day ſo given is one week, which being expired, and no cauſe ſhewen to the contrary, then publication is granted.

After Publication ſo granted, neither party can examine VVitneſſes, unleſſe it be by ſpeciall order of the Court, which is not granted without an Oath made, that the party which requireth the ſame, nor any of them hath ſeen, or been made privy to any Examinations of any the VVitneſſes formerly examined in this Court, by either of the parties, and ſome good cauſe be ſhewen either by Oath or Certificate of Commisſioners, why the party could not get his ſaid Witneſſes examined within the time limited for their Examination; In which caſe ſometimes the Court giveth Order to examine VVitneſſes by a time prefixed with this Proviſo, that the party ſhall not in the mean time ſee the ſaid former Examination.

Touching

Touching ſetting down the Cauſe for hearing.

AFter Publication had, the Plaintif, or in his neglect, the Defendant may procure a day of hearing of courſe, to be ſet down by his clark, at the end of the Term, when the Lord Commiſſioners do ſet down daies for hearing the next Term.

The daies muſt be ſet down according to their Priority of Publication.

No cauſe muſt be preſented for hearing, the ſame Term, that Publication doth paſſe.

All Proces to heare Judgments, muſt be returnable ſix or ſeven daies before the day of hearing, except it be in the beginning of the Term, when the time will not beare it, and the VVrit muſt have on the back of it the very day of hearing.

If the Plaintif appeare not, the Defendant is to be diſmiſſed with coſts: *Caries Reports* 45. collection of Orders in Chancery.

Touching Decrees take theſe enſuing Rules.

EVery Decree muſt be drawne up as ſhort as with conveniency it may, and not recite the Pleadings largely, but the ſum of it briefly.

If the Decree be made before the Maſter of the Rolls, or before any Judges, it being drawne, muſt be firſt ſigned by them, and after by the Lords Commiſſioners, and then it muſt be Inrolled.

The Decree muſt be ſigned and Inrolled before the firſt day after the next *Michaelmas*, or *Eaſter* Term after the making of it. VVhere

VVhere the Decree concernes Lands or Leaſes, it muſt be entred into the Regiſters Docquet Book, within ſixe months after the making of it; otherwiſe it ſhall not prejudice the Purchaſors of the Land.

No Decree ſhall be binding to any but thoſe who are ſerved with Proces *Ad audiendum Judicium*, or that did appeare *Gratis*.

The Purchaſor that comes in by conveyance *Bona fide* from the Defendant before the Bill exhibited, and that is no party by Bill or Order, ſhall not be bound upby any Decree.

But where a man becomes a Purchaſor (*Pendente lite*) and without any colour of privity, or allowance by the court, there it ſhall regularly binde him; yet in ſuch caſe if there have been any intermiſſion of the Suit, or the court be acquainted with the conveyance, the court is to give order in it.

No Decree made by this court can be croſſed, altered, or explained upon a bare Petition onely, and yet hereby it may for ſome ſpeciall reaſons be ſtayed for a while, till it can be moved in court.

A Decree of this court once Inrolled cannot be reverſed or altered but by a Bill of Review, unleſſe it be in caſe of miſcaſting, where the caſe is demonſtrative, and then it may be done by order.

A Decree will bind the perſons, for where any do refuſe to obey it, this court will impriſon him until he do conforme.

A Decree of this court doth bind the right and title to Lands and Goods; for this court by their order of Sequeſtration and Injunction doth diſpoſe of the poſſeſſion thereof for ever to him the court judgeth to have right thereunto in conſcience.

VVhere a Decree is to be made upon a pretence of

of Equity againſt the judgement of another court, this Judgment is firſt read, and then the Decree is not to vacate the Judgment, but to order the unreaſonable party.

The Courſe of the Court to inforce Obedience to their Decrees, and to puniſh the Breach of them.

FIrſt they are to ſerve the party with the Decree it ſelfe, under the Seale of the Court, and if he yeeld not obedience unto, but ſtands obſtinate, they then proceed to take out of the Court all the Proceſſes of contempt againſt him one after another, and the party being taken is to be ſtraitly impriſoned, and not to be ſet at liberty till he yeeld obedience to it (that is to ſay) That he performe that part of the Decree which is preſently to be done, and give ſecurity to performe that part which is to be done for the future.

Alſo the Lords Commiſſioners for his contempt may Fine him what they pleaſe, and afterwards Extreat.

Where the Decree is for Land, and the party remaine obſtinate and wilfull after his Impriſonment, the Court doth uſe to grant an Injunction for the poſſeſſion, and this being diſobeyed after it is ſerved, and Oath made thereof, the Court doth in that caſe grant a Commiſſion to ſome Juſtices, and if need be, a Writ of Aſſiſtance to the Sheriff, to put him in poſſeſſion, See *Caries Reports*, 23.34.36.37. *Tothill* 56. & 57. *Collection of Orders in Chancery.*

Where this Injunction is granted for poſſeſſion of the Land, and the party ſits out all the Proceſſe of

of contempt, and cannot be found by the Serjeant at Armes, or make a Reſcue, a Sequeſtration ſhall be granted of the Land, *Tothill*, 107.

This Sequeſtration is granted ſometimes as well of the Goods as of the profits of a mans Land, and that for his wil ullneſs in ſtanding out in contempt, and diſobedience to the Court; as wel where it is for diſcharge and payment of Debts and duties, as where the Decree is for the payment of a ſum of money, *&c. Tothil* 175. 176.

Concerning Contempts.

IN caſe of contempts upon force or ill words, uſed upon ſerving of proceſſe, or other words of Scandal to the Court; if they be proved by *Affidavit*, the party forthwith upon motion will be committed, if the words ſpoken deſerve it.

For other contempts againſt the Orders and Decrees of the Court, take as followes.

Firſt, An Attachment goes forth upon *Affidavit* made of the contempt.

Then the party being taken is to be examined upon interrogatories, which is uſually upon motion referred to one of the Maſters in the Chancery.

The contemptor coming in *Gratis*, or upon Proceſs, ſhould give notice to the Clark of the other ſide of his appearance; and if then there be not Interrogatories put in within eight dayes, or being examined, if no reference be of the Examination, nor Commiſſion taken out by the other ſide, nor Witheſſes examined to proove the contempt in a Month: The Contemptor ſhall be diſcharged, and ſhall recover Coſts, taxed by a Maſter without any Motion.

If after he hath appeared upon the contempt, he depart not examined, he muſt ſtand committed till he be examined and cleered; and if it be found, he muſt cleer it, and pay coſts, ere he be diſcharged.

Such as ſtand committed for contempts upon Attachments or commiſſions of Rebellion, muſt enter into Bond to attend from day to day, not to depart without leave of the Court, *Caries Reports*, 9. 44. 70. 71. 82. *Collection of Chancery Orders.*

Impriſonment upon contempts for matters paſt may be diſcharged of Grace, after ſufficient Impriſonment, or it may be otherwiſe diſpenſed withall in ſuch caſe.

But where the Impriſonment is for non-performance of any Order of the court in force, then the perſon ſo in contempt ought not to be diſcharged, except he firſt obey: Only the court may diſpence with the contempt for a time.

Concerning Bills of Review.

A Bill of review ſhall not be admitted, except the Decree be firſt obeyed and performed.

No Bill of Review ſhall be put in, except the party that prefers it, enter into a Recognizance with Sureties for the ſatisfying of coſts and damages for the delay, if it be found againſt him.

Where a cauſe is diſmiſſed upon full hearing, and the diſmiſſion ſigned and Inrolled, it cannot be retained againe, but by a Bill of Review, and that in ſome ſpecial caſes.

No Bill of Review is grantable but upon Errour in Law, appearing in the Body of the Decree it ſelfe, without averment or further examination of any

any matter of Fact which might have been had at the time of the Decree, unleſſe he ſhew ſome new matter which hath riſen in time after the Decree, whereof the Plaintiff could not have advantage of before; and then upon Oath made that there is a diſcovery of ſuch new matter, this Bill (by leave of the Court) may be exhibited.

But he that ſo obtaineth this Bill muſt firſt give ſecurity by Recognizance to a Maſter, as is before directed.

VVhere the Decree is to yeeld the poſſeſſion of Land, deliver VVritings, or to pay Money, he muſt firſt performe that before a Bill of Review: But if the Decree be to extinguiſh a right, convey Land, releaſe a debt, acknowledge ſatisfaction, or to cancell Records or Evidences, or the like, it may be ſtayed by the Order of the Court, till the Bill of Revivor be determined.

No witneſſes which either were, or might have been examined upon the former Bill, ſhall not upon this Bill of Revivor be examined to any matters, *Collection of Orders in Chancery, Tothill* 173.

Having now gone through the generall proceedings of Chancery upon Bil and anſwer; there are ſome things which in ſome Caſes are eſſentiall to thoſe Proceeds, which take as follow: and firſt concerning Injunctions.

THis Is looked upon according to the generall acceptation, as that which makes ſtay of Proceedings at common Law, although in many caſes it is likewiſe

likewise to the end to gain the Possession of Land, in some cases it proceeds, and in some cases it is subsequent to the Decree, and sometimes by VVriting, and other times by word of mouth, as when the party who is to be inhibited, is present in court.

Where it stayes proceedings at Law, in some cases it gives leave to go to Triall and Judgment, but stays Execution.

Where the matter of Law is tryed, it Barrs them from Judgment, as the case may be.

Or where there is a Judgment, and that executed, it will stay the mony in the Sheriffs hands after the party is arrested at Law for the mony.

This iniunction is commonly procured either upon some writing, or matter of Record plainly appearing; or upon a very old Debt that hath slept long, creditor and Debtor being both dead, or in such cases, where the Defendant doth not appear, but sits an Attachment, or if he appears, either answers not the Bill, or confesses so much thereof as is sufficient.

Where either the Defendant is beyond the Sea, or being in the Kingdome, doth absent himselfe, so that he cannot be served, or where upon any Pretence he hath gotten time to answer, the Court doth usually in those cases grant an injunction to stay suit till the Defendant doth appear.

Where there is a commission granted to take an answer in the country, an injunction will be granted to stay the Defendants Suit at Law, (if any be) till the answer come in, and of this the Defendant must take notice without any Serving of it.

Where there is a verdict at common Law in an action of Debt, and a Bill be afterwards exhibited for releise, here the money must be deposited in court, before the court will grant an Injunction, unlesse in some

ſome caſes where ſome ſpeciall matter in Equity appeares by the Defendants anſwer, or in ſome former Decree.

Where a perſon priviledged in this Court is ſued elſewhere, hee may ſtay that Suit by this Injunction.

VVhere Timber is unjuſtly felled, ancient Meadow ground plowed up, ancient Paſtures that have not been plowed up in twenty yeares before, or for the maintenance of Incloſures kept in for 20. years before, there it is grantable according to the caſe.

VVhere an Injunction is granted to quit a poſſeſſion, it is granted of Houſes and Land onely, and not of a Rent or ſuch like thing, and it is not to be granted before the hearing of the cauſe, unleſſe upon Oath that the Plaintiff was in poſſeſſion at the time of the Bill put in, and then onely of that poſſeſſion he had then, and three yeares before, and at the time of the motion, and not to be extended to the poſſeſſion of thoſe from whom he claimes: And this ſhall not hinder the Defendants Suit in Law, making of a Leaſe, taking of a Diſtreſſe, *&c.* And this Injunction where the Plaintiffe delayes his Suit is to be diſſolved againe.

VVhere it is to ſtay, or remove a Suit by *Certiorare*, Bond muſt firſt be given, that the Bill hath matter ſufficient in it to beare it, and ſhall be proved true within fourteen dayes after he hath the VVrit; and this if he doe not in this time, after a Certificate of his neglect from the Examinor, it ſhall be diſmiſſed with Coſts, and a *Procedendo* granted.

Where the Iniunction is to be obtained by motion for matter in the anſwer, there the Counſell muſt put the caſe in writing to the Court.

VVhere it is granted upon the merit of the cauſe, or upon ſpeciall cauſe in Equity, it is to ſtand till the hearing, unleſſe the Plaintiff delay his Suit.

This Injunction muſt be ſerved either on the

party himſelfe, his Counſellor, Attorney, or Sollicitor, *&c.* as the caſe requires, and the manner of deſerving it is much like the ſerving of a *Subpœna.*

A bare Petition onely will not diſſolve this Iniunction, nor if it be had by motion is it to be diſſolved without motion of the adverſe party.

VVhere an Iniunction is granted till the anſwer be put in, and no order be made to continue it, within fourteen daies after the anſwer is come in; in this caſe it ſhall be diſſolved upon the Regiſters Certificate thereof only; and if no motion be made that Term, or at the next generall Seale after the Term, to continue it for inſufficiency of, or matter confeſſed in the anſwer, it is diſſolved of courſe; ſo where it is to ſtay a Suit at common Law, and the Plaintiff doth not proceed for three Termes together.

VVhere the Iniunction is diſobeyed (if you would force obedience thereunto) upon Oath made thereof, all the Proceſſes of contempt are to go out againſt him, one after another, and being taken, he is to be Impriſoned till he do yeild obedience to it, or give ſecurity to do it; nor is he to be heard in the principall caſe, till he yeild obedience in every thing in the Iniunction: *Tothill* 107. *Caries Reports* 112. 113.

Touching Diſmiſſion, take theſe things following.

THis is prayed by motion, and had upon Plea to the Bill, or hearing of the Cauſe, and not after Examination of VVitneſſes before hearing, but upon a diſcontinuance of proſecution, by motion and order of the Court. Where

VVhere the Plaintiff diſcontinues his proſecution, aft r all the Defendants have anſwered, above the ſpace of one Term, the Cauſe is to be diſmiſſed of courſe; but after a Replication put in, it cannot be diſmiſſed without an Order upon motion.

VVhere a cauſe is diſmiſſed upon a full hearing, recorded and certified by the Lords Commiſſioners, it cannot be again retained, nor a new Bill admitted, but where there is new matter.

VVhere the Bill is duly diſmiſt of courſe, or by order, no motion will be heard to retain it, till the coſts aſſeſſed upon the diſmiſſion be paid, and certified from the Attorney, or the other ſide, that it is done.

No diſmiſſion, or Retainer upon a diſmiſſion will be granted upon bare petition only.

In caſes of Diſmiſſion not upon a full hearing, to a new Bill this may be pleaded.

But for the cauſes of Diſmiſſion, the Court will retain and diſmiſſe as it doth ſee cauſe: See Collection of Chancery Orders; *Caries Reports* 34.43.74. 76.110.

Touching references and Reports take as followes.

WHere there is a Demurrer to the Juriſdiction of the Court, there no Reference may be had to a Maſter upon it, but it muſt be heard before the Lords Commiſſioners themſelves.

After Examination of VVitneſſes is paſt, there can be no reference had to a Maſter to end and determine, unleſſe it be in caſe of meer kinn, poverty, or conſent of parties.

A reference of the State of the caſe is ſparingly granted, unleſſe where there is conſent of the parties.

The Examination of Court Rolls is to be by reference, but there it muſt be to two Maſters at the leaſt.

No reference ſhall be made of the inſufficiency of an anſwer, without allegation of ſpeciall cauſes: See the collection of Chancery Orders.

The Report of the Maſter upon the Reference muſt not exceed the warrant of Reference, which is the Order of Court by which it is referred to him.

After the Maſter hath ſeen the Order, he uſually grants out a VVarrant, which is ſhewen unto the other ſide, whereby he gives notice of the time of his hearing the Cauſe, where the other ſide with their Counſellor, or Sollicitor, may as they ſee cauſe attend.

The Report it ſelfe is uſually briefe, and with ſome opinion, if the caſe be not very doubtfull, and if ſo, then it muſt let forth the ſpeciall Caſe.

No Order can be had to confirme the Report, till it be firſt filed with the Regiſter, under the Maſters hand, and a day given to the other ſide, for ſeven daies at the leaſt, to ſpeak to it in Court; and yet where it is not to ground a Decree, and it be poſitive, it is to ſtand, and Proces may be taken out for the performance thereof, unleſſe the adverſe party upon notice thereof, do within eight daies after (if it be in the Term time) or if the generall Seales for motions, or if after within foure daies of the beginning of the next Term, get it controlled.

VVhere there is an appeale to the Court from the report of a Maſter, the party that doth ſo appeale, muſt depoſite forty ſhillings with the Regiſter, and a day will be ſet for the Judgment of the Court, and

if

if the Court do adjudge it againſt the Appealor, the other ſhal have the forty ſhillings, and what more the court ſhall iudge fit; if otherwiſe the mony ſhall be reſtored. See Collection of Chancery Orders.

The Matters cheifely under reference, are either inſufficient anſwers, or matters of account.

VVhere the Maſter upon reference to him reports the anſwer to be inſufficient, the Complaynant may take out two *Subpenas* againſt the Defendant, the one for twenty ſhillings coſts, and the other to make a better anſwer.

Touching Orders, and the Regiſter that drawes them.

THe Regiſters being ſworn, do ſit in Court, and take notice of all orders the Court doth make, and take ſhort Notes in their booke, by which to draw up ſome more full Remembrance of that which paſſed in Court.

VVhere any Order ſhall be made, and the Court not informed of the laſt materiall Order formerly made, no benefit ſhall be taken by ſuch order, as being ſurreptitiouſly procured, and to that end the Regiſter doth mention the laſt former Order in the preſent Order.

An Order made out of the Generall rule muſt ſet down the ſpeciall Reaſons of it.

No Order ſhall be explained by petition, but by publick motion, both parties being heard.

No Order but finall Orders and Decrees may be received to be entred after eight dayes after the pronouncing of it, that day being excluded.

The Regiſter is to keep copies of the Orders, he

doth deliver, and his hand is to be put to the Order before it be entred.

The Register after a hearing, and Reference to a Treaty is to set down in the Order of Reference, what was the Opinion of the Court, unless the Court do direct it to be drawn otherwise.

All Orders drawn up by the Register are to be entred under the Registers hand in due time.

The Register is within ten dayes after the End of every Tearme to certifie the Commissioners, what References depend in the hand of any Master, and how long they have depended, that so if any of them have depended overlong, the Court may require an account thereof from the Master, and quicken him to a speedy dispatch.

Touching Suits in Forma Pauperis.

THe Counsell and Attorny assigned for *Paupers* may not refuse, but must attend their Businesse, unless they shew cause to the court, why they cannot so do.

They must alwaies have their Order of Admission with them, and first move that, before any other motion; and it hinders not, but that they may, if they have any other Motion, make it afterward.

Where the Register findes that he is not a *Pauper*, he shall not draw up any Order upon the second motion; but the *Pauper* shall loose the Fruit of it.

No Counsellour, Attorney, or Officer of the Court appointed to be for a *Pauper* by the Court is to take any thing of, or contract for any thing with him, and the *Pauper* that can be proved so to have

have given or contracted, is to be dis-paupered for ever.

If a *Pauper* ſell or contract for his Suit, or any part of it, his Bill ſhall be diſmiſſed, and never after retained.

No proceſſe of contempt ſhall go out for a *Pauper*, untill it be ſigned by the ſixe Clarkes, who deal for him, and he muſt ſee there muſt be cauſe for it.

The Courſe to obtain the Admiſſion is by way of Petition, either to the Commiſſioners of the great Seal, or to the Maſter of the Roles, who underſcribe it, the party having made Oath that he is not worth five pound, and aſſignes him Counſell and Attorney.

His Admiſſion muſt be ſhewen in the ſeverall offices, where he hath Occaſion to paſſe.

Touching petitions, for the avoyding of the multitude of idle ones, drawn by perſons altogether ignorant of the practiſe and Courſe of the Court, or the true ſtate of the Petitioners buſineſſe, it is directed, that Petitions before they be preſented to the Commiſſioners of the great Seal, or Maſter of the Rols, be ſhewed to that ſixe Clarke, who is the Petitioners Attorney in court, or to his Deputy, and by him approved and ſubſcribed; and for this no fee is to be taken; but this not to be underſtood of petitions adviſed, and ſigned by counſell: Nor of Petitions, containing any matter of complaint, againſt the Attorney, or his under-clarks.

Touching Affidavits.

AFfidavits are moſt generally made before Maſters of the Chancery; but where it is for the ſer-

ving of a *Subpena*, they are ſometimes taken and certified by others.

An *Affidavit* may not be taken againſt an *Affidavit*, for if it be, the later is not to be uſed.

An *Affidavit* ought not to be taken tending to the proofe or diſproofe of the matter in queſtion; Nor may any ſuch matter be admitted, to be colourably inſerted into an Oath made of the ſerving of proceſſe: See more to this purpoſe, *Caries Reports* 68. 69. 81. 82. 84. 85. 98. 99. 103.

The way of proceeding againſt a priviledged perſon.

A Declaration againſt a Priviledged man for Debt, or any thing whereof the Court holdeth Plea, is to be delivered to one of the ſixe Clarkes, whom the Plaintif maketh his Attorney, and he thereupon giveth a day (as it is commonly tearmed) which is a weeke, (*viz.* the whole next returne to the Defendant to anſwer, which day is entred in the ſix Clarkes Coſt Book in this manner, (*Roberts* againſt *Johnson*,) A Day is given from the day of Saint *Michael* in one Month, in a Plea of Priviledge.

Day being thus given, the Declaration under the Attorneys hand is ſent over to the petty bag, by one of the ſaid Attorneys Clarks, which Declaration is breifly entred by one of the clarkes there, and likewiſe the day that is given to the Defendant to anſwer in a Role there, which is called *Rotulum, remembranc. Parvæ bagæ*; At which day by the courſe of the common Law, if the Defendant plead not, he is fore-iudged the court, but the courſe of the chancery hath been of late to allow the Defendant a day

of

of Imparlance, that is, Day till the next return after the return given him to anſwer, which is in this manner.

The Defendant retaineth one or other of the ſix clarkes, who imparleth for him, which is done in the ſixe clarkes coſts booke in this manner, (*Roberts* againſt *Johnſon*) imparlance untill the morrow of all Soules, at which day it is ſent over to the petty bag to be entred in the aforeſaid Rolle next under the ſaid Declaration.

The ſaid day of imparlance being paſt, another day, *Videlicet*, commonly five dayes in a week (which is commonly called a peremptory day) is given by the plaintifs Attorney, and entered in the petty bag, as aforeſaid, to the defendant to plead, or elſe iudgment is to be entered againſt the Defendant.

If the Defendant plead, his plea is delivered by his Attorney to the Plaintiffs Attorney, and then if the Plaintiff will proceed to a Tryall, he is to ioyne up the Iſſue (if he may, for in ſome caſes he cannot) or elſe the Plaintiff is to reply, and to give the Defendant a day, *Viz.* A whole Terme to ioyne up Iſſue, which is given and entred as the day to anſwer: And if the Defendant by that day ioynes not up the Iſſue, Iudgment is entred up by *Nichil dicit*. And it is to be noted, that after a peremptory day given, the Defendant cannot pray *Oyer* of the Bond and Condition, or ſuch like, as of late is uſed for a meer delay: But if the Iſſue be ioyned up, either by the Plaintiff or Defendant, then is the Record made up, and the ſame with a *Venire facias* is ſent into the Kings Bench to be tryed, as an Action there at Iſſue, and upon Iudgment there, Execution is thereupon there awarded.

But if the Defendant refuſe or neglect to imparle at the day given him to anſwer or to plead, for he may

may plead at that day if he will, then is Iudgment entred againſt him, and execution awarded.

Upon Judgment either by default, or *Nihil dicit*, ſome of theſe Writs of Execution are awarded; if for debt, the Plaintiff may have an *Elegit* by *Weſtminſt.* 2. *Chap.* 18. or elſe a *Levari facias*, or *Fieri Facias*: and if the Plaintiff cannot levie his Debt and damages, then he ſhall have a *Capias ad ſatisfaciendum*, either for all, or ſo much as reſteth unſatisfied.

The Judgement being ſatisfied, the Plaintiff by himſelfe or his Attorney (if the Defendant do deſire it) doth acknowledge ſatisfaction upon the Judgement in the Petty-Bag Office.

It is to be noted, that whatſoever day is given by any of the Six Clarks, and by them entred in their Book, worketh nothing if the ſame be not entred in the Petty-Bag.

The courſe uſed where the priviledged Perſon ſues.

THE Defendant being Arreſted by an Attachment of Priviledge, at the Suit of a priviledged man, muſt retaine one of the Six Clarks to be his Attorney, and muſt put in Baile to the Plaintiffs Action, according to the courſe of the Court, which is, to appeare from day to day, untill the Plea be determined, to ſatisfie the Plaintiff all ſuch ſumms of Money as the Plaintiff ſhall recover againſt him by reaſon of this Suit: Then the priviledged man putteth in his Declaration, and the proceedings thereupon are the ſame as before, againſt the priviledged man.

By the courſe of the Court the Defendant is to put in four Subſidy men, or ſufficient Sureties (be the

the Action never ſo ſmall) as appeares betweene *Archibald* and *Burrell*, 23. *Eliz.* wherein the Defendant is bound in four hundred pound, the ſum of the Action, and every Surety in a hundred pound.

If Judgement be given for a priviledged man in this Court, he may if he will take out Execution againſt the Defendant as before; but if he will not, then he may take out a *Scire facias* againſt the Defendant and his Manucaptors upon the Bail, whereupon if Judgment be had upon the ſayd *Scire facias*, in the Chancery Execution is awarded as in the former Actions: But if upon Iſſue joyned, and ſent into the Kings Bench, and upon a Tryall there Judgment be given, then is Execution there awarded; and upon ſatisfaction of the debt and damages, the Baile is to be diſcharged, upon the acknowledgment of ſatisfaction, as before.

If either the Plaintiff or Defendant upon a Declaration of Priviledge, or *Scire facias*, Demurre in Chancery, the Demurrer being joyned, a day is ſet down by the Lords Commiſſioners for arguing thereof before them; and if upon the Argument it fall out to be a *Reſpondeas ouſter*, then Iudgment is entred thereupon; and if it be againſt the Defendant, then Execution is awarded, and if againſt the Plaintiff, then it is, That the Plaintiff ſhall take nothing by his VVrit, or by the Declaration.

But if it be a *Reſpondeas ultra*, then is the Defendant to pay Coſts, and a day given for him peremptorily to plead, or Iudgment to be entred, *Practice of the Chancery*, 93, 94, 95, 96.

A Table

A Table of Fees due unto the Six Clarks, and other the Officers of the Court.

	l	s	d
For all firſt, ſecond, or other Copies of all Bills, Anſwers, and other Pleadings whatſoever, as alſo of all Certificates and Examinations made or taken, by vertue of any Commiſſion hut of this Court, and of the Interrogatories therewith returned, and alſo of all Declarations, or proceedings by Engliſh Bill, or according to the courſe of the Common Law, and for Copies of Records, Rolles, or Evidences, brought in to be copied, or remaining in the ſayd Court, for every leafe of Paper containing fifteen lines.	0	0	8
For the Inrolling of all VVarrants, whereby any Patents, Commiſſions, Licences, Pardons, Leaſes, or other Grants whatſoever, doe paſſe by and under the Great Seale, after the rate of every Skin ſo paſſing the Great Seale,	0	2	0

For the Inrolling of all VVarrants for all Commiſſions for the Peace, for Goale delivery, for a Liberty for *Oyer* and *Terminer*, for Piracies, for the preſervation of the Game of the Swans, and for the Commisſions for Inquiry ſued out for the benefit of any private perſon, for every of the ſayd Commiſſions, 0 -- 1 -- 8

For

For the inrolling of all VVarrants for all Commiſſions of appeale, and for the Admiralty for every one of them, 0 -- 3 -- 4

For the inrolement of every VVarrant for every ordinary licenſe, or pardon of Alienation, 0 -- 3 -- 4

But if it be of more then ordinary length, then according to the length after the rate of 20 s. the Skin, and not above.

For the inrolling of all VVarrants for all Commiſſions in the nature of VVrits, of *Diem clauſit extremum, mandamus, Ideota probanda, Lunatius inquirend. Melius inquirend.* for every of them, 0 -- 3 -- 4

For the inrolling of the VVarrants, for every Patent or grant of the Cuſtody of any Ward, 0 -- 8 -- 8

For the inrolling of the VVarrant for every Preſentation, Donation, or Revocation, to any Rectory, Vicaridge, Deanry, Arch-deconry, Chancellor-ſhip, Treaſurer-ſhip, or Dignity, to any Metropoliticall, Cathedrall, or Collegiate Church, or for any Cannon-ſhip, or Prebend, in any of the ſaid Churches, or for the Maſter-ſhip in any Hoſpitall or other Eccleſiaſticall living, or for the Grant of any Preſentation or Preſentations, *pro unica vel pluribꝫ vicibus* thereunto, 0 -- 3 -- 4

For the inrolling of the VVarrants for every *Mandamus ad inſtallaad.* 0 -- 3 -- 4

For the inrolling of all VVarrants for all Licenſes for wines, for every life, 0 -- 3 -- 4

Or ſuch Fee not exceeding that proportion, as by the Commiſſioners ſhall be ſet down, formerly they paid, although granted for three lives, 0 -- 6 -- 8

For the inrolling VVarrants for every pardon of Outlawry, c -- 3 -- 4

For the inrolling of the VVarrants for every Denization, or Commiſſion of Bankrupts, 0 -- 3 -- 4

For the writing of every Exemplification, as well of

of Records in the Tower, as of any Record whatſoever, being in their Cuſtody, after the rate for every Skin, 01 -- 06 -- 8

Of every Client for every Term, whilſt his Cauſe dependeth undetermined, by decree or by diſmiſſion, the termly Fee of, 0 -- 3 --4

If there were twenty Plaintiffs or more in one Bill, they all pay but one Fee for one Term, 0 -- 3-- 4

But for every three Defendants, accounting the Husband and the VVife but for one perſon, there is due for their firſt appearance, 0 -- 3 -- 4

And upon the firſt appearance if every Defendant appeares ſeverally by himſelfe, he is to pay the Fee of three ſhillings foure pence; but every Term afterwards during the continuance of the Cauſe, there is only the Fee of 3 s 4 d. the Term to be paid for all the Defendants, that appeared in any Term or Vacation, in the ſame Cauſe.

For a *Subpæna* VVrit to anſwer, 0 -- 2 -- 6

If there be three in the VVrit, you pay more, 0 -- 0 -- 6

For the Attachment, 0 -- 2 -- 10

For breaking it up with the Sheriff, 0 -- 2 -- 0

For return of the Attachment, 0 -- 0 -- 4

For the Proclamation upon the ſame, 0 -- 2 -- 10

For the return of the Proclamation, 0 -- 0 -- 4

For the Commiſſion of rebellion, 0 -- 18 -- 2

For the inrolement of every *Liberate*, and *Allocate*, 0 -- 3 -- 4

The Rule which the Plaintiff gives the Defendant, to make anſwer by a certain day, in caſe where the Defendant appeares, } 0 0 4

For each Rule of Publication, after Examination of VVitneſſes, 0 0 4

For entring them with the Regiſter, for each, 0 0 4

The

The Defendants appearance, 0 4 0
In which is included the Attornies Fee for the Term.
For the Oath made that the anſwer is true, 0 0 4
The like for every Defendant, 0 0 4.
For the Commiſſion to take the anſwer in the Country, by *Dedimus poteſtatem*, 0 7 10
Beſides the ingroſſing of the Bill, which is included in it, every Sheet, 0 0 6
For the *Subpœna* for coſts where the Bill is not put in by the Complaynant within the time limited, 2 6.
For a Bill of coſts and the entry of it, 2 4.
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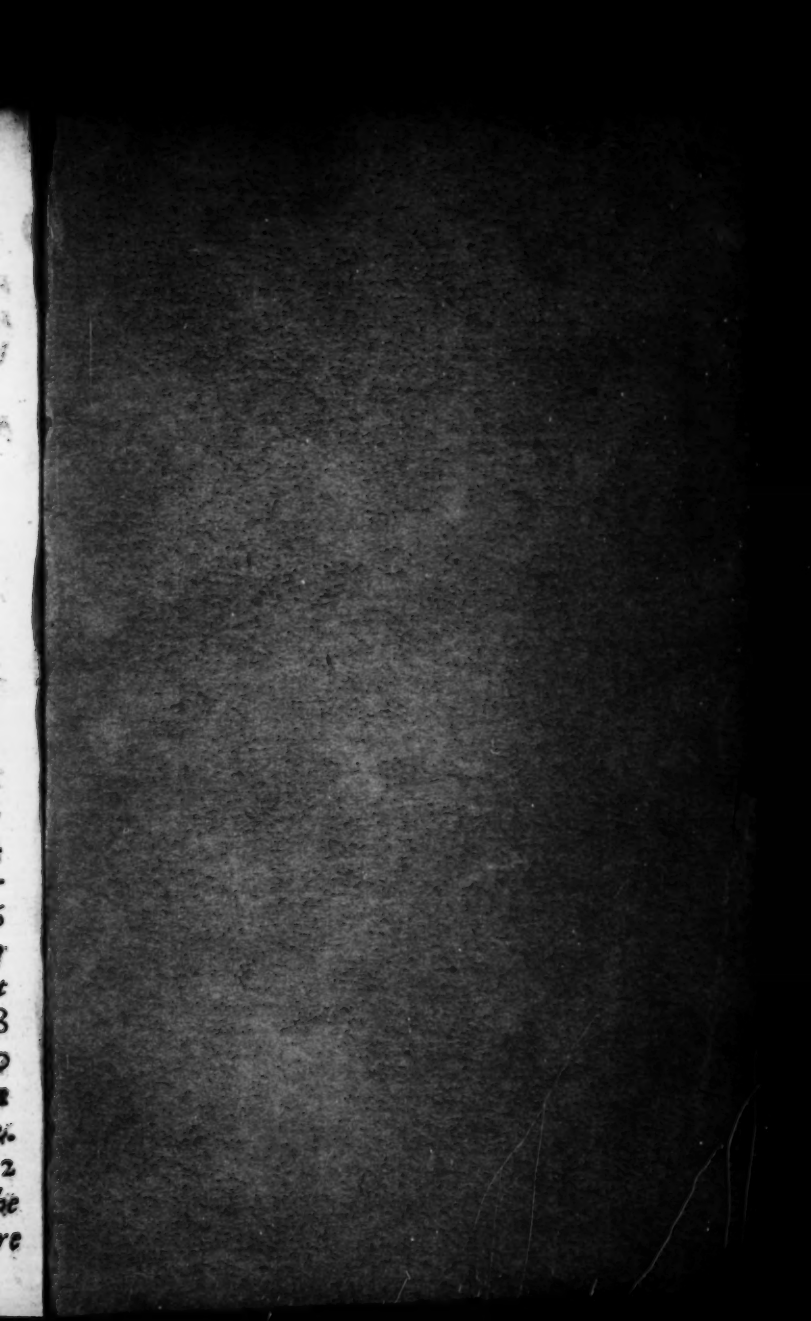
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